



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT KISUMU

(CORAM: OMOLO, TUNOI & PALL, J.J.A.)

CRIMINAL APPEAL NO. 45 OF 1996

BETWEEN

WALTER MAGANA OKORE ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Appeal from a Judgment of the High Court of Kenya at Kisumu  
(Justice Kuloba) dated 31st March, 1995

in

H.C.CR.A. NO. 41 OF 1994)

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JUDGMENT OF THE COURT

We think no matter of law is raised before us in this appeal. The trial magistrate found as a fact that the appellant and the respondent knew each other. The learned judge confirmed that finding. No point of law arises from that finding. The magistrate considered fully the circumstances under which the complainant said he saw and recognised the appellant. He found as a fact that at 8.00 p.m. the complainant who knew the appellant and who walked with him for some distance before the attack was able to recognise the appellant and the Judge confirmed that finding.

Mr. Aroka for the appellant appears to want us to revisit the findings of fact made by the magistrate and confirmed by the first appellate court. There is no basis upon which we can do that. The findings of fact appear to be fully supportable on the evidence adduced in the trial court. This court can only interfere with findings of fact if such findings are supported by no evidence at all or if on the evidence on record the findings are wholly unreasonable. That is clearly not the position here. We find no merit in the appeal against conviction and we dismiss it. On sentence, we notice the learned judge reduced the period of police supervision to one of two years. the judge had no jurisdiction to do so as the law mandatorily sets down the period of police supervision at five years. We set aside the learned Judge's order as regards that period and restore the period of five years which had been correctly imposed by the magistrate. Only to that limited extent is the order of the High Court altered.

**Dated and delivered at Kisumu this 18th day of November, 1996.**

**R.S.C. OMOLO**

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**JUDGE OF APPEAL**

**P.K. TUNOI**

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**JUDGE OF APPEAL**

**G.S. PALL**

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**JUDGE OF APPEAL**

**I certify that this is a true copy of the original.**

**DEPUTY REGISTRAR**