



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUNGOMA**  
**Criminal Case 7 of 2004**

**REPUBLIC.....**  
**.....PROSECUTOR**

**VS**

**BENARD KHAMALA MAFUKO.....**  
**ACCUSED**

**RULING**

The accused person in this case, Benard Khamala Mafuko is before this court facing a charge of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars are that on the 17<sup>th</sup> day of December, 2000, at Bunjosi Village, Misikhu Location in Bungoma District within Western Province, murdered Edward Wanyama Wafula.

The prosecution closed its case after tendering the evidence of 5 witnesses.

Both the learned Principal State counsel and Mr. Ocharo advocate for the accused submitted under section 306 of the Criminal Procedure Code.

It is the submission of Mr. Ocharo, that the accused is not criminally liable to the charge of murder because the accused was insane at the time of committing the offence. Mr. Onderi, the learned Principal state Counsel is of the view that the submission of the defence can only be entertained after the accused has been placed on his defence.

I have considered the evidence tendered in support of the case against the accused. I have also taken into account the detailed submissions. I am of the considered view that the evidence incriminates the accused as having committed the offence of murder. He is consequently placed on his defence. The issue is to whether the accused is criminal liable or not will be dealt with after the case has closed.

Dated and delivered this 13th day of September 2006.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Aoga holding brief for Mr. Ocharo for the accused and Mr. Onderi for the state.