



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KAKAMEGA  
Criminal Case 34 of 2004**

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

**DANIUM OLUOCH.....1<sup>ST</sup>  
ACCUSED**

**LEONARD IRUNGU.....2<sup>ND</sup>  
ACCUSED**

**RULING**

1. The accused persons herein were jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. It was alleged that on the night of 27<sup>th</sup> May 2004 at Malimuli Village, Ilegi Sub-Location within Kakamega District jointly with others not before the court, murdered Josephat Shitsama. They denied the charge and although G.B.M. Kariuki, J. took the evidence of a few witnesses with the aid of assessors, on 3<sup>rd</sup> November 2009, Chitembwe J. ordered the hearing to proceed de novo and by the time the State closed its case on 14<sup>th</sup> March 2011, no witness had testified against the accused persons..
2. There being no evidence on record, I find that the accused persons have no case to answer and they are acquitted of the charge of murder and they shall be ordered to be released forthwith unless they are otherwise lawfully held.
3. Orders accordingly.

**I. LENAOLA**

**JUDGE**

**DELIVERED, DATED AND COUNTER-SIGNED BY L. KIMARU, JUDGE AT KAKAMEGA  
THIS 4<sup>TH</sup> DAY OF JULY, 2011**

**L. KIMARU**

**JUDGE**