



**IN THE HIGH COURT OF KENYA AT KISII**  
**CIVIL CASE NO.382 OF 1997**

**SAMUEL ABUYA AMBIJA ..... PLAINTIFF**  
**VERSUS**  
**WILLYS ONYANGO SAMO ..... RESPONDENT**

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**RULING:**

The application focuses on the terms of the consent recorded by the parties before Hon. Mr. Justice Mbaluto. By that order the dispute in the case was referred to the D.O. of Rongo Division for arbitration with 4 elders 2 of whom were to be appointed by each side to the case.

At the hearing one of elders appointed by the plaintiff disqualified himself and became a witness. The D.O. should have given the plaintiff an opportunity to appoint another elder to sit on the panel. He did not do so. Instead he proceeded to hear the matter with a panel of 3 elders. That is certainly a grave error. In this application it is alleged on behalf of the plaintiff that the "D.O. only came with three elders chosen by himself." In the light of the D.O.'s clear abrogation of the terms of the consent order by which the dispute was referred to him, it is probable that he overreached himself as alleged in this application. At any rate there was misconduct on the part of the D.O. when he did not give an opportunity to the plaintiff to nominate another elder to sit on the panel. In not doing so he deviated from the terms of the order.

For these reasons I find that the award of the D.O. is unacceptable. I set it aside as sought in Notice of Motion dated 10th April 2001. I make no order as to costs.

**Dated and delivered on the 26th June 2001**

**I.C.C. WAMBILYANGAH**

**JUDGE**



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