



Case Number:	civ case 1377 of 95
Date Delivered:	14 Mar 1997
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	-
Judge:	Moiyo Matayia Ole Keiwua
Citation:	SANDI SAMANI T/A COSMOS MOTORS SPARES vs TREAD SETTERS TYRES LTD.[1997]eKLR
Advocates:	-
Case Summary:	-
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO.1377 OF 1995**

**SANDI SAMANI T/A COSMOS MOTORS  
SPARES.....PLAINTIFF**

**VERSUS**

**TREAD SETTERS TYRES LTD.....DEFENDANTS**

**R U L I N G**

The plaintiff seeks to have the defendant's defence and counter claim struck out for being frivolous and an abuse of the court process and judgment be entered as prayed in the plaintiff's submission, the plaintiff counsel stated that the application is for summary judgment under order 35 of the Civil Procedure Rules. The plaintiff claims a sum of Kshs.408,058/20 as the agreed or reasonable charges for goods delivered and or services rendered to the defendant.

The application is opposed. It is urged that, it is the plaintiff who owes the defendant Kshs.450,000/= the sum counter claimed in the defence and counter claim, on account of overcharging by the plaintiff.

It is submitted that, supporting documents to show that the plaintiff claim is founded, are suspect documents and not from the defendant company. They are addressed to a company called COMTRA Ltd. but cancelled to read the plaintiff's firm's name. The plaintiff's prices were grossly exaggerated.

I am satisfied that the defendant be given leave to unconditionally defend the suit as there are triable issues.

The plaintiff's application is therefore dismissed with costs.

Dated and Delivered this 14th day of March 1997

in the presence of:

No appearance for plaintiff

Mrs. Muchiri for defendant

**M. OLE KEIWUA**

**JUDGE**



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