

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