



## SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 11 January 2022  
**STATUS** Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

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#### **Cipla Vet (Pty) Ltd v Merial and Others (1068/2020) [2022] ZASCA 5 (11 January 2022)**

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The Supreme Court of Appeal (the SCA) today dismissed the appeal by the appellant and upheld the order of the Gauteng Division of the High Court, Pretoria.

The appeal concerned the interpretation of a cost order granted by Murphy J sitting as the Court of the Commissioner of Patents on 24 July 2014.

The dispute between the parties arose from a bill of costs which was submitted by the respondents for the costs granted by Murphy J in respect of the wasted costs tendered by the appellant after they amended their plea on the eve of the trial. The appellant opposed the taxation claiming that the tender for wasted costs and the order by Murphy J did not make provision for the recovery of the costs of two counsel and the costs of expert witnesses. This prompted the respondents to seek an order for the clarification of the order of Murphy J. The application served before Baqwa J who dismissed the application. The application was further heard by the full court after the respondents were granted leave by Baqwa J. The full court set aside the dismissal of the application by Baqwa J and clarified Murphy J's order accordingly. The appeal was directed at this order and the crisp issue before the SCA was whether the full court was correct in clarifying or varying the order made by Murphy J.

The SCA held that from a reading of the judgment of Murphy J it was clear that there was an agreement between the parties regarding the qualifying fees of their expert witnesses. Second, that there was no possibility that para (ii) of the order Murphy J granted could be read without reference to para 96 of the judgment of Murphy J. This was so because that was the only para dealing with the basis from which the costs order was made in the entire judgment. The SCA found that on a grammatical reading of para 96, it revealed that Murphy J recognised that the costs of two counsel were justified in this matter because of the nature of the claim and its complexity.

The SCA concluded that the full court's decision was sound, and consequently the conclusion by the full court that Baqwa J failed to have proper regard to the context and the ordinary wording of para 96 and should have done so in the circumstances of this case, could not be faulted.