

AFRIFORUM v MALEMA: THE LIMITS OF LAW AND COMPLEXITY**N Buitendag*****K van Marle******SUMMARY**

The *Afriforum v Malema* 2011 6 SA 240 (EqC) case drew considerable attention in the media and in the public discourse. The purpose of this note is to reflect upon the judgment from a theoretical vantage point. More specifically, by reading the judgment through an autopoietic systems theory lens, some points of criticism on the judgment in particular and the law in general become apparent.

It is contended that the judgment illustrates how law necessarily excludes the factual complexity of a case, first by deciding which are the only facts legally relevant, and then second by reducing their meaning to a simple judgment of legal or illegal. Since law recognises only legal communication, this function means that the communication and identity are removed from legal subjects and given legal meanings.

An attempt is made to open law to considerations external to what it traditionally considers to be relevant to its operation. The problem that law excludes facts it deems irrelevant is addressed through the introduction of a third value whereby to measure the legal and illegal, namely justice. Through asking if its judgments of legal or illegal are just, law becomes capable of reflexive self-observation. In this manner the very complex historical and narrative trappings of the case at hand do not need to be excluded as they are in the judgment.

Rather than absolute, binary judgments, a slower, reflective engagement that makes modest claims is supported.

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