



# Legal Commentary

## **KFCB Versus Content Creators**

by GW Rifa Consulting

# INTRODUCTION

On 24th May 2024, the Kenya Film Classification Board (KFCB/the Board) issued demand letters to several content creators including Abel Mutua, Njugush, Obinna and Jacky Vike. In these letters, the KFCB asserted that the content creators have been releasing audiovisual works without licences from the film regulator. The letters, issued by the CEO Paskal Opiyo, reminded the content creators that the KFCB's mandate extends to the regulation of the creation, distribution, broadcasting, possession and distribution of all film and broadcast content in the country. Channelling its inner power, KFCB then signed off by demanding that all the recipients of the letters comply with a host of sections contained in the Films and Stage Plays Act (*remember this piece of legislation as it is central to the workings of the Board*). Failure to comply, the Board warned, would result in legal action.

## So, Was KFCB Wrong to Issue the Demand Letters?

Not quite. The content put out by the likes of Abel Mutua and co. falls under the category of audio-visual works. An audio-visual work is media that contains both sound(audio) and pictorial/video(visual) components. According to the Films and Stage Plays Act (*told you this law would come in handy*) audio-visual works are included in the broader definition of the term film. And, as per Section 4 of the Act, no one is allowed to make films in the country for public consumption without a filming licence.

So, who issues these filming licences you ask? That mandate belongs to the Kenya Film Classification Board through authorized licensing officers. However, (*insert Ian Mbugua's voice*), there are a couple of things to note about obtaining a filming licence. Most notable is that the licences are not blanket permits issued one-off to filmmakers or which operate for a specific period. Every film warrants a new licence which application is made by submitting a full description of the scenes and the script. If any of these is in a language other than English, then a translation must be provided. The

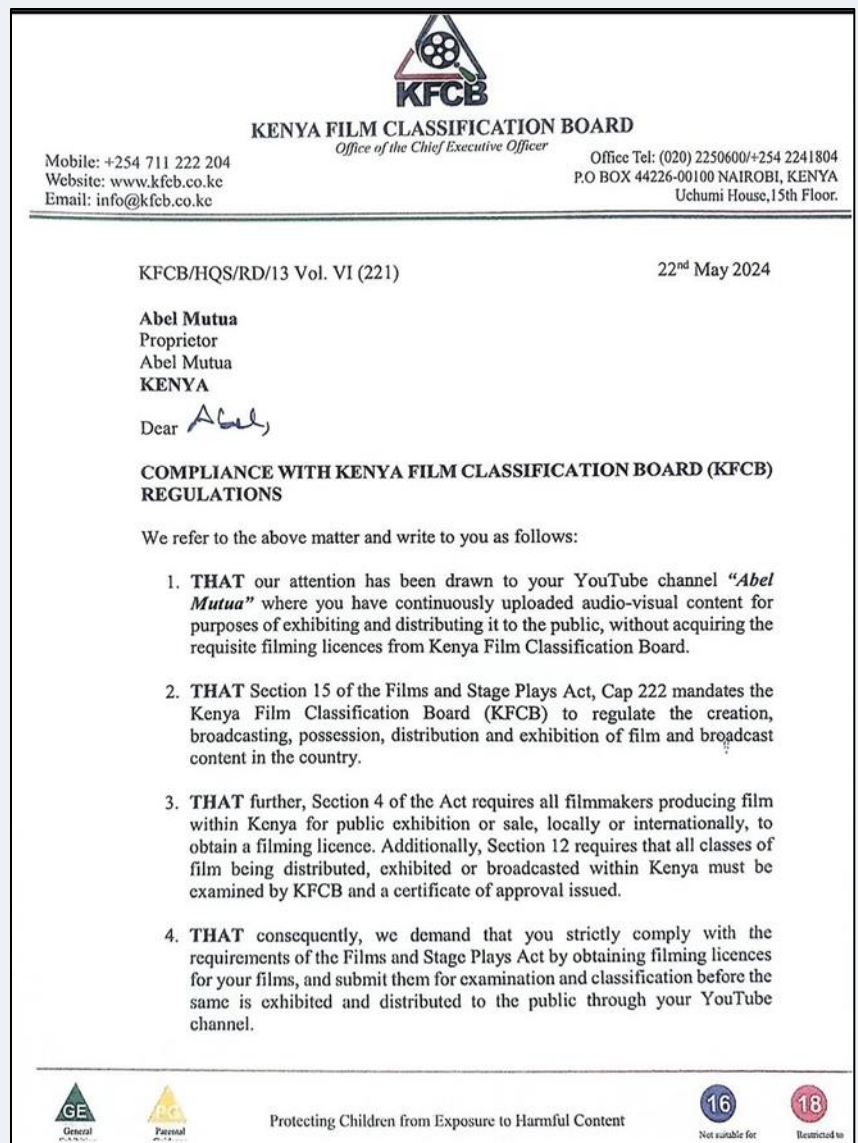


Image: KFCB Letter to Abel Mutua

licensing officer will examine the requested documents and use his discretion (fancy word for wisdom) to issue or refuse to issue a

licence. He can also demand that certain conditions be met before issuance of the licence. Creative freedoms are almost non-existent when it comes to these licences because filmmakers are not allowed to make any alterations to the films without the prior consent of the licensing officer.

A strict reading and interpretation of the Films and Stage Plays Act shows that KFCB was well within its mandate to issue the letters. This strict adherence to the literal words as used in any law or regulation is referred to as keeping to the letter of the law. Consequently, and in keeping with the **letter of the law**, the content creators were required to obtain filming licences before making and distributing their content on the various platforms.

### Why Protest?

The letters issued by KFCB only tell one side of the story; that of the licensing authority. The recipients of the letters also told their side by posting them on social media and the revocation by KFCB shows that their story was more compelling. Context is important and none more so than the digital age we live in. The advent of over-the-top (OTT) and social media platforms has drastically reduced mainstream film production and the arduous processes that come with it. Audio-visual works are shot on smartphones and go-pro cameras and very quickly uploaded on the World Wide Web.

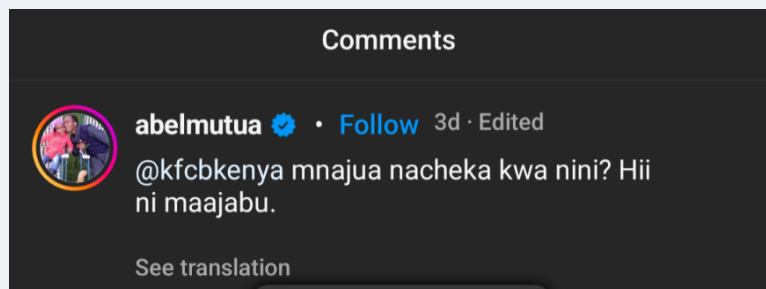


Image: Screenshot of Abel Mutua's response to KFCB on Instagram

Demanding filmmakers to obtain licences for every video uploaded on YouTube or TikTok sounds borderline impossible. Content creation has become a source of livelihood for many. Demanding compliance with the strictures of the Films and Stage Plays Act seems retrogressive in a country where so many youths are struggling with unemployment. The demands by KFCB seem even more punitive when platforms such as YouTube, TikTok and Facebook Watch have their own community/user guidelines on the content that can be uploaded and shared. These guidelines are usually backed by local laws and tend to vary from country to country. It would therefore seem that KFCB need to adopt a more lax approach to the implementation of the law and consider the drafters' intention (**spirit of the law**).

For more insights on media law, please contact Wahome Wilson at [wahome@gwirifa.com](mailto:wahome@gwirifa.com) or [info@gwirifa.com](mailto:info@gwirifa.com)



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