

DECISION

IN THE MATTER OF INAPPROPRIATE CONTENT AIRED BY MT. KENYA TV STATION ON 19TH APRIL 2021 AT 2.00PM

1. Introduction

1.1. The Communications Authority of Kenya (the Authority) received a complaint about content that had been aired on Mt. Kenya TV station, a vernacular Kikuyu station owned by Slopes Media House Ltd (Licensee), on 19th April 2021 at around 2pm. The programme, '*Mucii wa Ciiana*' (which means Home for the Children), featured an animated movie, *Free Jimmy*, with a scenes containing sexually explicit content, incidences of drug abuse robbery and violence. The '*Mucii wa Ciiana*' programme is scheduled during the watershed period (hours of 5am -10pm)

1.2. The Authority, made a preliminary assessment of the movie and noted the following:

1.2.1. *Free Jimmy* is a 2006 adult animated comedy film first released in Norwegian in 2006, and later in English in 2008. The plot is an adult-oriented dark humor i.e. a style of comedy that makes light of subject matter that is generally considered taboo, particularly subjects that are normally considered serious or painful to discuss. The film features four drug addicts, five vegans, three mobsters, four hunters and one drug addicted elephant.

1.2.2. The licensee had aired the movie up until a sexually explicit scene and stated that they stopped the broadcast after the scene (approximately 10minutes 36 seconds into the movie). An analysis of the content revealed the following:

Minute 00:22 Poster depicting a character smoking narcotics

Minute 00:43 Poster promoting an image of alcohol

Minute 00:50 Poster promoting robbery with violence

Minute 01:01 Poster depicting a prisoner smoking a pipe and holding a naked inflatable sex doll.

Minute 9:46 Image of characters smoking narcotics in a vehicle with traffic ticket pinned onto windscreen

Minute 9:53 Image of characters preparing to smoke narcotics

Minute 10:21 The sexually explicit scene depicts two characters, male and female having sexual intercourse in what appears to be an abandoned house.

2. The Rules

2.1. Following the receipt of the complaint, the Authority noted that the material raised issues warranting investigation and determined that the following three violations had occurred:

2.1.1. The Licensee had aired adult content during watershed period

2.1.2. The offensive content was aired as a children animated cartoon, at a time when most children were at home during the school holidays, thus causing harm to the children who may have been watching.

- 2.1.3. The Licensee had aired programming that was not classified by Kenya Film Classification Board (KFCB)
- 2.2. Section 46 (I) of the *Kenya Information and Communication Act, 1998* (KICA) vests broadcasters with the responsibility to:
- (a) provide responsible and responsive programming that caters for the varied needs and susceptibilities of different sections of the Kenyan community;
 - (c) observe standards of good taste and decency;
- 2.3. In addition, Section 3.1.1 of the Programming Code for Broadcasting Services in Kenya requires all broadcasters to ensure that unsuitable material for children and minors is not broadcast at times when there is likely to be a large audience of young listeners or viewers.
- 2.4. In accordance with Section 83A of KICA, the Authority issued a Notice of Violation on 22nd April 2021. The Notice required the broadcaster to “show-cause” why regulatory action should not be taken against the station, within 24 hours. The Notice further summoned the broadcaster, to accord them an opportunity to provide more detailed explanations on the matter.

3. The Licensee’s Response

- 3.1. The Licensee responded through a letter dated 23rd April 2021 and indicated that:

- 3.1.1. The content aired was indeed harmful for the public and was aired during the watershed period.
 - 3.1.2. The Licensee is regulated by the Media Council of Kenya under the Media Council Act 2013.
 - 3.1.3. The incident was highly regrettable and was a result of content mix up in their control room.
 - 3.1.4. The movie had been inadvertently aired.
 - 3.1.5. The Licensee had sent apology letters dated 22nd April 2021 to the Authority and KFCB respectively.
 - 3.1.6. The Licensee had issued public apologies through their Mt. Kenya TV channel and social media platforms.
 - 3.1.7. The Licensee had suspended the programming official who was on duty during the time when the offensive content was aired for a period of fourteen (14) days, pending further investigations as evidenced in a warning letter.
 - 3.1.8. The Licensee had commissioned a fresh audit of all programmes lined up for airing on Mt. Kenya TV to ensure they comply with Part IV(19)(b) of the Kenya Information and Communications (Broadcasting) Regulations 2009.
 - 3.1.9. The Licensee had instituted an internal investigation to establish the cause of content mix up.
- 3.2. In conclusion, the Licensee committed to ensure that content disseminated on its platforms is within the set standards and statutory requirements, and to ensure that such content mix up would never be repeated.

4. DISCUSSION BETWEEN THE AUTHORITY & LICENSEE

- 4.1. In compliance with the summon, the Licensee appeared before the Authority on the 23rd April 2021 at 3.00pm.
- 4.2. The Licensee attributed the airing of the offensive content to an inadvertent content mix-up in the studio. They further indicated that the offensive content was not in the programme line up but could not explain how the content got into their content server. In this regard, they stated that they had initiated internal preliminary investigations leading to disciplinary measures, including suspension of a number of personnel who were on duty on the material day. In addition, the Licensee informed the panel that the station was commissioning a new audit of all content lined up for transmission to ascertain its suitability for airing. They also informed the Authority that the station was currently undergoing staff restructuring and suspected the mix-up could have been an act of sabotage. The licensee undertook to put in place structures that would prevent a recurrence. The Licensee expressed remorse and regret for airing the offensive content
- 4.3. The Authority engaged the Licensee's representatives on their obligations with regard to the Broadcasting framework and the associated expectations in accordance with the Act, Broadcasting Regulations and the Programming Code.
- 4.4. Upon further discussions with the Licensee's representatives, it emerged that:

- 4.4.1. The Licensee has outstanding compliance issues with the Authority
- 4.4.2. The Licensee required a clear understanding of the content of their license terms and conditions, the broadcasting regulatory framework, including the Authority's mandate.
- 4.4.3. The Licensee did not demonstrate clear knowledge of the respective mandates of the Communications Authority of Kenya, Media Council of Kenya and Kenya Film Classification Board.
- 4.4.4. The Licensee did not provide concrete plans on how the station would ensure compliance during the ongoing staff transition.
- 4.4.5. The proposed remedial measures were considered to be inadequate to prevent a recurrence of violations.

5. ANALYSIS BY THE AUTHORITY

5.1. Relevant Legal Provisions

- 5.1.1. The ICT sector law vests the Authority with the responsibility of regulating broadcasting services in Kenya. This mandate includes prescribing and enforcing adherence to the broadcasting content standards as encapsulated in the Programming Code which sets the standards for the time and manner of programmes to be broadcast by licensed

broadcasters under the Kenya Information and Communications Act, 1998 Cap. 411A.

5.1.2. The associated tools available to the Authority in this regard are the Kenya Information and Communications Act, 1998, the Broadcasting Regulation 2009 and the Programming Code.

5.1.3. According to Section 46A of KICA, the functions of the Authority in relation to Broadcasting Services are to:

- a) Promote and facilitate the development, in keeping with the public interest of a diverse range of broadcasting services in Kenya:
- b) Facilitate and encourage the development of Kenyan programmes:
- c) Promote the observance at all times of public interest obligations in all broadcasting categories:
- d) Promote diversity and plurality of views for a competitive marketplace of ideas:
- e) Ensure the provision by broadcasters of appropriate internal mechanisms for disposing of complaints in relation to broadcasting services;
- f) Protect the right to privacy of all persons;
- g) Carry out such other functions as are necessary or expedient for the discharge of all or any of the functions conferred upon it under this Act;
- h) Administer the broadcasting content aspect of this Act;
- i) Develop media standards; and
- j) Regulate and monitoring compliance with those standards.

5.1.4. The Authority reviews the Programming Code biennially to ensure its continued relevance and alignment with trends in the broadcasting sector in Kenya. Compliance to the Programming Code is a mandatory requirement of all licensed Broadcasters, as it constitutes part of the license conditions.

5.2. Relevant Legal Provisions Violated

5.2.1. The Authority considered the provisions of the Broadcasting Regulation, Programming Code and the License Terms and Conditions and established the following violations:

5.2.1.1. *Part IV (19) of the Kenya Information and Communications (Broadcasting) Regulations 2009,* outlines the general requirements of content to be aired by licensed broadcasters and states the following: (1) A licensee shall ensure that no broadcasts by its station: (b) presents sexual matters in an explicit and offensive manner;

The content aired presented characters engaging in sexual acts at a time when children are likely to be watching, therefore exposing them to inappropriate and harmful content.

5.2.1.2. *Part IV (20) of the Kenya Information and Communications (Broadcasting) Regulations 2009,* outlines the general requirements of content to be aired by licensed broadcasters and states the following: (a) ensure that due care is exercised in order to avoid content that may disturb or be harmful to children, that has offensive

language, explicit sexual or violent material, music with sexually explicit lyrics or lyrics which depict violence; (b) not broadcast programmes with the content specified in paragraph (a) during the watershed period;

The Licensee aired sexually explicit animated cartoon during the watershed period in breach of regulatory requirements.

5.2.1.3. Section 3.1.1 of the Programming Code for Broadcasting Services in Kenya seeks to ensure that unsuitable material for children and minors is not broadcast at times when there is likely to be a large audience of young listeners or viewers.

The Licensee aired a sexually explicit animated movie, which was unsuitable at a time when children and minors were likely to be viewing.

5.2.1.4. Section 3.3.5 of the Programming Code for Broadcasting Services in Kenya states that Promotional material and music videos, which contain scenes of violence, sexually explicit conduct and/or offensive language intended for adult audiences shall not be broadcast during the watershed period.

5.2.1.5. Section 3.3.6 of the Programming Code for Broadcasting Services in Kenya states that material that contains images and/or language of a strong sexual nature or strong language in general must not be broadcast during the watershed period.

The Licensee aired images of a strong sexual nature in the animated movie during the watershed period.

5.2.1.6. Section 3.4.3.1 of the Programming Code for Broadcasting Services in Kenya states that representations of sexually explicit content must not occur before the watershed (in the case of television), when children are particularly likely to be listening (in the case of radio), or when content is likely to be accessed by children.

The Licensee aired a sexually explicit movie at a time when children and minors were likely to be viewing.

5.2.1.7. Section 3.4.3.2 of the Programming Code for Broadcasting Services in Kenya states that Programmes rated Adult only should not be aired during the watershed period.

5.2.1.8. Section 4.1.4 of the Programming Code for Broadcasting Services in Kenya states that in applying generally accepted standards, broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but are not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership).

- 5.2.1.9. Section 4.2.2.2 of the Programming Code for Broadcasting Services in Kenya** states that Children’s programmes shall not foster violence as a desirable means of resolving conflicts and problems. Any unavoidable depiction of such violence must portray the consequences of such violence to its victims and perpetrators.
- 5.2.1.10. Section 4.2.2.3 of the Programming Code for Broadcasting Services in Kenya** states that Children’s programmes shall not depict inappropriate sexual subjects or violent actions.
- 5.2.1.11. Section 4.2.2.4 of the Programming Code for Broadcasting Services in Kenya** states that Broadcasters should avoid programmes that portray any dangerous or harmful behavior easily imitated by children.
- 5.2.1.12. Section 4.7.2.2 of the Programming Code for Broadcasting Services in Kenya** states that explicit depiction of sexual arts in any programme including music, sexual perversions, nudity and pornography are prohibited during the watershed period and can only be allowed thereafter to the extent that is permitted by the Kenya Film Classification Board or its successor thereof.

The Licensee aired an animated movie that depicted sexual arts, sexual perversions, nudity and pornography, which are prohibited during the watershed period. In addition, the

broadcast content was not classified by KFCB prior to being aired.

5.2.1.13. Section 9 of the Kenya Information And Communications (Consumer Protection) Regulations, 2010 on the protection of children requires that (1) A licensee shall establish mechanisms that enable parents and legal guardians to block access of children to harmful content and (2) A licensee who owns promotes, glamorizes or markets alcohol and tobacco products or other harmful substances that are directed at children commits an offence.

The various legal provisions are further spelt out in the license terms and conditions.

5.3. Consideration of responses by the licensee

5.3.1. The Authority further noted the following arising from the discussion and responses by the licensee:

- a) The Licensee attributed the violation to content mix up and to an inexplicable error on the part of your station's studio personnel.
- b) The Licensee, upon detecting the error, pulled the programme off air and also aired apologies on the station and on their social media pages.

- c) The Licensee had complied with the requirement to respond to the Notice of Violation and to appear before the Authority within the prescribed timelines.
 - d) The Licensee indicated that there were ongoing staff changes and restructuring at the station. They further stated that the incident could have been a case of sabotage by exiting staff.
 - e) The Licensee acknowledged and apologized for the violation.
- 5.3.2. The Authority considered the Licensee's submissions, regarding ongoing and proposed future controls and found them inadequate to address the root cause of the violation.
- 5.3.3. The Authority took note of the following:
- a) The content in question was inappropriate for the watershed period, during which time children are likely to be watching the broadcast unsupervised.
 - b) The impact of the unsuitable transmission to children and other vulnerable demographic groups is further aggravated by the reality that schools are currently closed, against the wider backdrop of a pandemic, limiting other forms of entertainment. The grave negative impact the violation was likely to have on the vulnerable group who were likely watching TV without parental supervision would require substantial effort in helping to temper the impact.
 - c) The offensive content was not classified by KFCB.

- d) Mt. Kenya TV is on air on Signet DTT platform in Mt. Kenya Region, Nakuru, Eldoret and had an estimated viewership of 100,000 viewers.
- e) The Licensee had other pending compliance issues as communicated vide the Authority's letter dated 20th January 2021.
- f) The access controls to the station's programming queuing and scheduling system was not adequate.

6. DECISION

- 6.1. After due consideration of the above and the Licensee's submission, the Authority established that the airing of the animated movie, *Free Jimmy*, was in breach of the Broadcasting Regulations, the Programme Code, and the terms and conditions of the station's broadcasting license.
- 6.2. Therefore, pursuant to the provisions of the ICT sector law and subsidiary legislation, the Authority takes the following regulatory actions against Slopes Media House Ltd broadcasting as Mt. Kenya TV.

The licensee is **HEREBY DIRECTED** to:

- 6.2.1. Review its internal controls on access to the system for queuing and scheduling of its programmes to prevent a

recurrence of similar violations, and provide evidence to the Authority within seven (7) days.

- 6.2.2. Avail all staff of the station to undergo mandatory training on the Programming Code by the Authority within seven (7) days.
- 6.2.3. Review station's editorial policy to align it with requirements of the law on protection of children and file a copy with the Authority including information on the status of implementation of the same within seven (7) days.
- 6.2.4. Ensure that the station's presenters are accredited by the Media Council of Kenya and evidence of compliance duly filed with the Authority within seven (7) days.
- 6.2.5. Ensure that all its broadcast content is duly classified and rated by the Kenya Film Classification Board (KFCB), adherence to the intellectual property rights obligations in all its programming as required by Kenya Copyright Board (KECOBO) and file evidence of compliance with the Authority within seven (7) days.
- 6.2.6. Develop and air suitable programming to desensitize children that may have been exposed to the harmful content. The programming should educate children on the accepted societal values and the dangers of pornography, robbery, violence, drug abuse and use of profane language. The airing of the said content should continue for a minimum period of a month. The station will be required to present

the content of the programme to the Authority for review before airing.

6.2.7. Ensure that relevant staff of the station are trained on Ethics and the Code of Conduct for Journalism by the Media Council of Kenya and file evidence of compliance with the Authority, within 30 days.

6.2.8. The Authority notes with great concern that the Licensee has continued to countenance compliance issues that have remained outstanding for over 120 days and proceeds to impose a penalty of Ksh 500,000.

6.3. There is an urgent need to develop and implement adequate internal controls to manage the risks associated with this matter. The Authority notes that the constraints presented by the ongoing staff re-organization may lead to a similar violation. In the circumstances, and in order to ensure adequate safeguards, the station will be off air from midday (12:00 pm) today for a period of four (4) weeks to enable the licensee put adequate mechanisms in place to address these lapses.

TAKE NOTICE that the station will only go back on air after compliance is achieved on **ALL** the current and outstanding compliance issues and upon certification by the Authority.

6.4. The Authority recognizes the grave nature of this violation caused by the non-observance of safeguards, in this case, for the protection of children. In this regard, the Authority will be taking

an inter-agency approach to ensure that comprehensive action is taken.

6.5. The Authority shall continue to actively monitor the station's compliance with these directives as well as other regulatory requirements. Further regulatory actions may be taken against the station in case of non-compliance, as provided for in the Kenya Information and Communications Act.

SIGNED

Mrs. Mercy Wanjau, MBS
AG. DIRECTOR GENERAL