

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**JR. APPLICATION NO. 289 OF 2018**

1. GERALD JUMA GICHOHI
2. HUMPHREY KALAMA SHUME
3. PETER MWANGI KARIUKI
4. JAMES GITAU THANDI
5. DAVIDGIKUNJUMWANGI
6. FRANCIS NGURE KUWONA
7. OBADIAH MAZA MW AMBONU
8. PLACIDE MWAKISACID EDWARD
9. JOHN PHINEHAZ THAIRU
10. LAWRENCE KEARIE WARUKIRA .....APPLICANTS

**VERSUS**

**HON. PATRICK MARIRU, THE PRINICIPAL SECRETARY  
MINISTRY OF DEFENCE.....RESPONDENT**

**AND**

**THE HON. ATTORNEY GENERAL.....INTERESTED PARTY**

**RULING**

1. What is before me is the Notice of Motion dated 7<sup>th</sup> March, 2025.It seeks the following orders:

***1) That the Order made herein on 22<sup>nd</sup> July 2024 directing that the Warrant of Arrest issued against the Respondent herein Hon. Patrick Mariru the***

***Principal Secretary Ministry of Defence to be executed by the Officer-in-Charge of the Military Police at the Department of Defence (DoD) Headquarters be reviewed.***

***2) That an Order do issue that the Warrant of Arrest issued herein against the Respondent Hon. Patrick Mariru the Principal Secretary Ministry of Defence be executed by the Inspector General of the National Police Service or any police officer under him.***

***3) That costs of this Application be borne by the Respondent.***

- 2.** The Applicants seek, a review of this Court's order of 22<sup>nd</sup> July 2024 which directed that the Warrant of Arrest issued against the Respondent, Hon. Patrick Mariru, Principal Secretary, Ministry of Defence, be executed by the Officer-in-Charge of the Military Police at the Department of Defence (DoD) Headquarters.
- 3.** It is argued that following the issuance of the Warrant of Arrest, the Court Bailiff was unable to effect personal service upon the Officer-in-Charge of the Military Police at the DoD Headquarters, having been frustrated and directed from one office to another. The Bailiff consequently resorted to substituted service by registered mail. Despite such service, the Warrants remains unexecuted, and the Respondent has not appeared before this Court for mitigation and sentencing for contempt of court, for which he had previously been found liable.

4. The Applicants contend that they could not have anticipated that officers of the Department of Defence would frustrate execution of a court process duly issued by this Court. They further rely on Article 245(2)(b) of the Constitution, which vests in the Inspector General independent command over the National Police Service, and on sections 49(6) and 51(1)(b) of the National Police Service Act, which empower every police officer to serve or execute warrants lawfully issued by a court.
5. The Applicants therefore urge this Court to invoke its inherent powers to vary its earlier order, so as to enable the Inspector General or his officers to execute the Warrant of Arrest, thereby upholding the dignity and authority of the Court. They assert that no prejudice will be occasioned to the Respondent, who has already been adjudged in contempt and has absconded, frustrating the due process of law.
6. Reliance is placed in **Bernard Muia Kiala v Machakos County Government & another [2017] eKLR**, where it was held that a court has power under its inherent jurisdiction to make such orders as may be necessary for the ends of justice and to maintain its character as a court of justice. The Court in that case further affirmed that residual powers exist to ensure due process, prevent abuse of process, and secure a fair trial.
7. They also rely on the decision of the Court of Appeal in **Mukesh Kumar Kantilal Patel v Charles Langat [2021] eKLR**, where it was held that the jurisdiction to review or vary decisions is residual in nature and may be exercised cautiously in exceptional and compelling

circumstances to avoid injustice, promote public interest, and enhance confidence in the justice system.

8. The Applicants further submit that the continued inaction erodes public confidence in the administration of justice and it also argues that it amounts to allowing a contemnor to evade accountability.
9. The Application is unopposed.

### **Analysis and Determination;**

10. Upon perusing the Application and the Supporting Affidavit, this court is satisfied that the issue for determination is whether the Applicant has made out a case for the grant of the order sought.
11. The court has residual jurisdiction to issue the kind of orders like the one sought by the Applicant in order to ensure that the court orders are complied with and that Applicants do not remain with the barren order in their hands.
12. Given that the Respondent does not deny owing the amounts that the Applicants are pursuing, roadblocks must not stand in the way of the execution of court orders.
13. Orders that are issued by the court, which cannot be executed erode the authority and dignity of the court. This must be discouraged.

### **Determination;**

14. In allowing the Application the court will have taken a positive step towards discharging its duty to uphold, promote and fulfill access to justice under Article 48 of The Constitution.

**Order;**

The Application is allowed as prayed.

**Dated, Signed and Delivered at Nairobi this 7<sup>th</sup> Day of November  
2025.**

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**J. CHIGITI (SC)  
JUDGE**