

106599 - If he dies and leaves behind a son, the latter prevents his brothers and sisters from inheriting

the question

I am originally Tunisian. My uncle lived in France and did not come back since he firstly went 40 years ago. He passed away recently in a plotted accident in France, but he was buried in Tunisia. The issue is that his family will be given compensation because of that accident. My uncle married many times, the first time he married a French woman and had four daughters from her, we do not know anything about them, not even where they are. He married an Algerian woman as well and had a daughter from her, she residents in Algeria and we have contact with her. The last wife, who plotted the accident, is Algerian and he divorced her before he passed away, he has two sons from her resident in France. This is all we know about his wives. We do not know if his marriage with both Algerian women was Islamically legal. Probably it was not.

The question:

- Do his three brothers and three sisters have right in this compensation? If yes then how much is everyone's share?
- If it was not possible to give his daughters and sons their rights of this compensation, then what shall we do with their portion of it?.

Detailed answer

If the children were attributed to him during his lifetime, and he agreed to that, then it is not permissible to cast aspersions on their lineage or to claim that his marriage to their mother was not legitimate. How can it be so when you say that he divorced his last wife before he died; can there be any divorce unless there is first a marriage?

If a man claims a foundling of unknown lineage as his own, and no one disputes with him concerning that, then he is attributed to him according to sharee'ah and he may inherit from him.

It says in Kashshaaf al-Qinaa' (4/235): If a man says that a foundling is his child, and that is possible, then he is to be attributed to him, because this is a kind of attributing someone whose lineage is unknown to one who may possibly be his father without causing any harm and there is no reason to refute the claim. In that case the child should be attributed to that person. And it is purely in the interests of the child because maintenance and clothing will be due to him, and his lineage will be connected and it is as if he is giving him wealth. End quote.

This compensation comes under the same ruling as diyah (blood money), so it is to be divided among the heirs in accordance with the shares of inheritance.

Based on this, the compensation should be added to this man's estate, and it should be divided along all his children, male and female, from all three wives, with each male getting a share like that of two females. If you do not know anything about his daughters from his first wife, then you can tell the French government and they can look for them.

You do not have any right to the compensation or the estate, because the presence of a son of the deceased means that the siblings of the deceased, both male and female, are prevented from inheriting.

And Allaah knows best.