

272059 - If a woman's guardians for the purpose of marriage are of equal standing, who takes precedence?

the question

There is a woman in her forties whose younger brother, who is thirty years old, did her marriage contract without the knowledge of her older brother, who is fifty years old, and her father is deceased. Is the marriage contract valid, or is it not valid unless the guardian is the older brother?

Detailed answer

In order for the marriage to be valid, the marriage contract should be done by the woman's guardian or his proxy, in the presence of two male, Muslim witnesses, because the Prophet (blessings and peace of Allah be upon him) said: "There is no [valid] marriage without a guardian." Narrated by Abu Dawud (2085), at-Tirmidhi (1101) and Ibn Majah (1881) from Abu Musa al-Ash'ari; classed as sahih by al-Albani in *Sahih at-Tirmidhi*. And he (blessings and peace of Allah be upon him) said: "There can be no [valid] marriage except with a guardian and two witnesses of good character." Narrated by al-Bayhaqi from 'Imran and 'A'ishah; classed as sahih by al-Albani in *Sahih al-Jami'*, no. 7557.

The woman's guardian is her father, then his father, then her son, then his son (if she has a son), then her brother through both parents, then her brother through her father only, then their sons, then her paternal uncles, then their sons, then the paternal uncles of her father, then the ruler. See: *al-Mughni* (9/355).

Based on that:

If the father and grandfather of the woman are both deceased, and she has no adult son, then guardianship passes to her full brothers.

Secondly: if the guardians are equal in their degree of kinship, such as full brothers, then the jurists differed as to which of them takes precedence with regard to guardianship.

Some of them said that the one who is most entitled to it is the best of them in terms of knowledge and religious commitment; if they are equal in that, then the older one takes precedence, and if they argue and compete, then they should draw lots. This is the view of the Shafa'is and Hanbalis.

Some of them said that the best of them [in terms of knowledge and religious commitment] should take precedence, and if they compete, then the judge should decide which of them takes precedence. If there is no judge, then they should draw lots.

According to either view, if she appoints one of them, then guardianship belongs to him.

If one of them goes ahead and arranges her marriage, with her consent, her marriage is valid, even if he is the youngest of his brothers, so long as he is an adult, whether the other brothers are aware of that or not.

Al-Khatib ash-Sharbini ash-Shafa'i said in *Mughni al-Muhtaj* (4/265): If the guardians are the same in degree of kinship, such as full brothers, or brothers through the father, or paternal uncles, and she gives permission to all of them, or she says: I give permission to do the marriage contract for me with So-and-so, then whoever among you wants to may give me in marriage to him, then it is recommended (mustahabb) that the one who has greater knowledge regarding the issue of marriage should do her marriage contract, because he has more knowledge of the conditions thereof. The next in order of precedence is the most pious of them, as it says in *ar-Rawdah*, because he is more compassionate and more keen to make sure that the suitor is a good choice. After him comes the oldest, because he has more experience of life, if that is with the consent of the others, so that they will all agree and so that no one will get upset because another dealt with the matter on their own.

If one who is less qualified gives her in marriage with her consent to a compatible suitor, that is valid, and the others should not object. End quote.

Al-Bahuti al-Hanbali said in *Kashshaf al-Qina'* (5/58): If two or more guardians of the woman are equal in degree of kinship, such as her brothers from both parents or through the father, or paternal uncles, or sons of her brothers, if she gives permission to one of them,

then he is the one who should represent her in the marriage contract, and it is not valid for anyone else, to whom she did not give permission, to do the marriage contract for her, because he does not have permission. If she gives permission to all of them and one of them gives her in marriage, it is valid for any of them to give her in marriage, because each of them is a valid guardian.

But the best is to give precedence to the most virtuous among those who are equal in terms of knowledge and religious commitment. Then if they are equal in terms of knowledge and religious commitment, precedence should be given to the oldest of them. End quote.

In *Hashiyat ad-Dasuqi* by al-Maliki (2/233), it says: If she appoints one of her brothers, for example, then the other brothers have no right to interfere in the matter or to compete with him. End quote.

Thus it becomes clear that the marriage is valid.

And Allah knows best.