

# The validity of a marriage contract under Islamic Sharia



A recent judgment of the Dubai Court of Cassation established the threshold required in respect of the issue of proving the occurrence of a marriage and its legal and Sharia prerequisites.

Article 19 of the Personal Status Law ('PSL') No. 28 of 2005 defines marriage as a 'contract entitling one spouse to have legal enjoyment with the other in order to protect his/her chastity and build a stable family under the husband's care on grounds that enable them to muster its burdens in affinity and mercy'.

While Article 27, paragraph 1 of the PSL further goes on to stipulate that 'Marriages shall be officially legalised and may be established by legal proof for a specific fact'.

## Background facts

The case relates to the issue of amending a succession order by the Dubai Personal Status Court, in respect of the distribution of inheritance, by including an additional heir. A claim was brought before the Courts by the Claimant, who alleged that the deceased had married her in secret over 37 years ago. It was contended that if this had indeed been the case, then according to Islamic Sharia rules, the Claimant would be entitled to a share of the deceased's inheritance and in particular, the share of a wife, which would be divided between the Claimant and the deceased's other wife.

The Claimant produced a marriage certificate officially legalised by a judge at the Dubai Personal Status Court and presented several witnesses who testified that she was married to the deceased. Her claim was successful before the Dubai Personal Status Court at First Instance and before the Court of Appeal. The

succession order was amended to include her amongst the remaining legal heirs of the deceased. The legal heirs of the deceased appealed the Dubai Personal Status Court Appeal judgment before the Dubai Court of Cassation, which overturned the Appeal Court's decision with the Court of Cassation ruling on the merits of the case and ultimately denying the claims of the Claimant.

## **Court of Cassation judgment**

The Court of Cassation stated that the core legal issue of this case was to determine whether the deceased had been married to the Claimant and to reinforce that a valid legal marriage contract is of grave importance and brought with it profound ramifications as to lineage and inheritance. Therefore, a higher threshold of proof as to its existence was required, to protect the sanctity of marriage.

The Dubai Court of Cassation determined that the legalisation of the marriage certificate was not sufficient to prove the occurrence of the marriage, since the marriage was concluded in another Emirate and the marriage certificate later legalised before the Dubai Personal Status Court. Moreover, the judge who legalised the marriage certificate neither performed the marriage ceremony nor witnessed its occurrence and hence the protection afforded by law to a legalised document and its contents, did not apply in this case. Furthermore, the marriage certificate was neither signed by the deceased nor the Claimant nor her father, therefore it could not be considered as proof that the deceased had indeed married the Claimant. Upon further inspection, it was discovered that the wording of the marriage certificate did not include the offer of the marriage and the acceptance nor the respective phrases required for a marriage certificate to be legal.

Additionally, the Dubai Court of Cassation declared that the testimony of the witnesses put forward by the Claimant did not satisfy Islamic Sharia requirements. As per the Maliki school of Islamic Sharia jurisprudence that prevails in the UAE, although hearsay testimony is allowed in personal status matters given the private nature of the issues that occur between spouses, it is not sufficient in providing proof of the occurrence of a marriage contract. The witnesses for this purpose would be required to give direct testimony in relation to the parties concluding the marriage contract i.e. they would have to testify that they had directly seen or heard the contracting parties conclude the marriage and that they were present on that occasion. Since neither of the witnesses put forward by the Claimant attended the wedding ceremony, nor had any direct contact with the contracting parties and the source of their testimonies was based upon what they had heard from others, it was concluded that the threshold of the testimony accepted by Islamic Sharia to prove a marriage was not satisfied.

## **Conclusion**

The judgment strengthens the safeguards and sets a higher burden of proof regarding the determination of the legality of a marriage, particularly in times where false claims are often utilised in order to bring about financial gains in matters of inheritance.

The judgment further highlights the importance of precise and accurate data being completed in a marriage certificate; that is, it must include full names, signatures of the parties, offer and acceptance phrases and follow the correct legalisation process.

The case serves as a reminder to ensure seamless, effective succession and estate planning and accurate record keeping are implemented and maintained so that the risk of heirs being burdened in their time of mourning a loved one is minimised as much as possible.

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