20928 - She married without a wali (guardian) and wants to repeat the marriage contract, but her husband refuses

the question

Im in a dilema at the moment. A few months ago I married a brother without my family's knowledge (my fmaily are non-muslims), we decided we would keep the marriage between ourselves until my family are in acceptance of him. Its was a very basic ceromony. But recently I have realised that my marriage is not valid as I did not have a wali present, only 2 witnesses. I informed my husband straight away and now he says he does not want us to be married again as he feels he is not ready for marriage.
The problem is we have been together once and now I am pregnant, and he says its a child of Zina and he has no responsability over it and its up to me what I decide to do but its better that I have an abortion for both our sakes and the childs.
Please can you help in in advising me what to do as if my family find out I will be disowned and have nowhere to go as I will be a single mother. My pregnancy is in early weeks so far.

Detailed answer

Praise be to Allah.

Islam forbids a woman to get married without a wali (guardian), and it regards a marriage contract done without a wali as invalid. A kaafir cannot be the wali of a Muslim woman, so if none of her family are Muslims, then the leader or mufti of the Muslims, or the imam of the Islamic center, should stand in as her wali.

Ibn Qudaamah said: A kaafir cannot be the wali of a Muslim woman under any circumstances, according to scholarly consensus.

Al-Mughni, 7/356

We have discussed all of the above, with evidence and the comments of the scholars, please see the answers to questions no. 7989 and 2127.

So the marriage contract is not valid, and it must be annulled and you have to keep away from your husband. The husband has to repeat the marriage contact in the manner prescribed in sharee'ah, if he wants to be married to you. Try to get some good and righteous people to intervene and convince him to do that, and to correct his mistake, as this is in your interests and the interests of your child. If he does not respond, then our advice is to forget about him, because his words are not the words of a trustworthy man. His saying that he is "not ready for marriage" indicates that he only wanted to have intercourse with you, and he did not want to adhere to the commands and laws of Allaah, and the commands to be the protector and maintainer of his wife.

See also the answer to question no. 13501

It is not permissible for him to tell you to have an abortion, and it is not permissible for you to have an abortion if the foetus has reached the stage where the soul has been breathed into it. If you do that you will be killing a soul.

See also questions no 12118 and 13319 and 4038.

With regard to the child, it is valid to call him after his father and he is not regarded as an illegitimate child, rather the scholars regard him as the child of a marriage contract with some faults in it, and the child born of such a marriage is to be attributed to his father. See al-Mughni, 11/196

Remember that Allaah has guaranteed provision for His slaves, and has promised that whoever fears Allaah, He will give him a way out.

So fear Allaah, put your trust in Him and repent to him… Part of repenting means separating from this man, because the marriage contract is invalid, for there is no marriage without a wali, as the Prophet (peace and blessings of Allaah be upon him) said. And when you do that you will be doing it only because it is the command of Allaah.

Know that whoever gives up something for the sake of Allaah, Allaah will compensate him or her with something better… May Allaah give you strength and make things easy for you.

And Allaah knows best.