214999 - The inheritance of one who is missing

the question

A child was kidnapped by some thieves and no trace of him was found. Does he inherit after his father dies? If the answer is yes, then how long should they wait for him?

Detailed answer

Praise be to Allah.

Firstly:

If someone disappears and it is not known whether he is alive or dead, the scholars describe such a person as *mafqood* (missing). The scholars are unanimously agreed that one who is missing is presumed to have died after the end of a period in which it is thought most likely that if he was alive, we would have heard some news of him. However, they differed as to the length of this period. The correct view is that there is no set time limit; rather the qaadi (judge) should study each case on its own merits and decide how long that period should be, based on the circumstances of the case that are presented to him.

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said: The correct view is that reference should be made to the judge’s opinion on this issue, which may vary in each case according to individuals, circumstances, places and governments, and he should set a time limit on searching for him, based on the likely period within which if he was still alive, we would have heard news of him, then he may be presumed to have died after that period ends. And Allah knows best.

End quote from *Tasheel al-Faraa’id* (p. 126.

Secondly:

If someone dies and one of his heirs is missing, then this missing person is presumed to still be

alive so long as the time limit stipulated by the judge has not yet expired. Therefore his share of the estate should be kept for him, then if that period ends without any trace of him being found, he may be presumed to have died when that period ends. At that point, his share of the inheritance that we had been keeping for him should be divided among his heirs on the day the ruling is issued that he is presumed dead, as if he has died and they have survived him.

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said: We have two matters to take into consideration with regard to one who is missing:

The first is what he would be entitled to inherit, and the second is what would be inherited from him.

With regard to what he would be entitled to inherit, if his relatives died before the ruling that he is to be presumed dead, then the missing person inherits from him, so his complete share should be kept for him, and he is to be treated like other heirs on the basis of certainty [that he is still alive]. If any of the heirs could be barred from inheriting because of him, then he should not be given anything, and if anyone’s share could be reduced because of him, then that person should be given the lesser amount, whereas those who are not affected by him should be given their shares in full.

If the deceased left behind a wife, a grandmother, a paternal uncle and a son who is missing: we give the wife one eighth, because that share is certain; we give the grandmother one sixth, because the missing person does not reduce her share; we do not give the paternal uncle anything, because the missing person bars him from inheriting; and we set aside the remainder. Then after that, one of four scenarios must apply:

1.. We find out that the missing person died before the deceased, in which case we give the remainder of the estate that was set aside to the heirs of the deceased who are entitled to it.

2.. We find out that the missing person died after the deceased, in which case the part of the estate that was set aside for him should be given to his heirs.

3.. We find out that the missing person has died, but we do not know whether he died before or after the deceased. It says in *al-Iqnaa'* that the part of the estate that was set aside should be given to the heirs of the deceased, as in the first scenario. In *al-Muntaha* it says that the part of the estate that was set aside is regarded as an inheritance belonging to the missing person, so it should be given to his heirs. The latter is our view and is the correct view, because the basic principle is that he is still alive and cannot be presumed dead until after the end of the waiting period, as previously determined.

4.. We do not know whether he is alive or dead until that waiting period ends, in which case the ruling is subject to the same difference of opinion as the third scenario.

The second matter is that with regard to inheriting from him, his estate is not to be divided during the waiting period, because in principle he is still alive. Then when the waiting period ends, we may presume that he has died and divide his estate among those who are his heirs when that period ends. Then if his fate remains unknown, this ruling remains in effect, and if it is confirmed that he has died before that or afterwards, his wealth belongs to his heirs when he dies, but if it becomes clear that he is still alive, then his wealth belongs to him.

Once it is established and becomes clear that his heirs at the end of the waiting period were not entitled to his estate, then he could claim any items that they inherited from him, if they are still there, or they should be replaced with similar items, or the value thereof, if they have been consumed or damaged, because it has become clear that they are not entitled to them.

End quote from *Tasheel al-Faraa'id* (p. 126-127).

And Allah knows best.