

BAIL IN RAPE CASES

CONFERENCE ROOM - 3 o'clock



I need to take this phone call.
I will return in a few minutes.

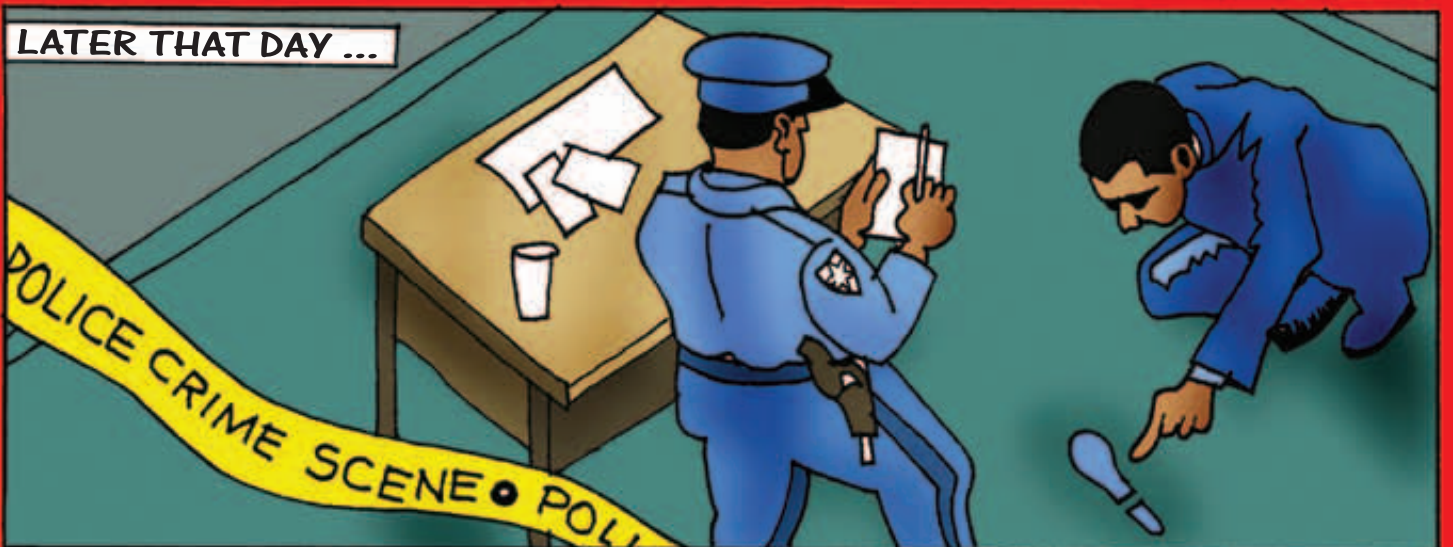
A FEW MINUTES LATER ...



AT THE SAME TIME ...



LATER THAT DAY ...



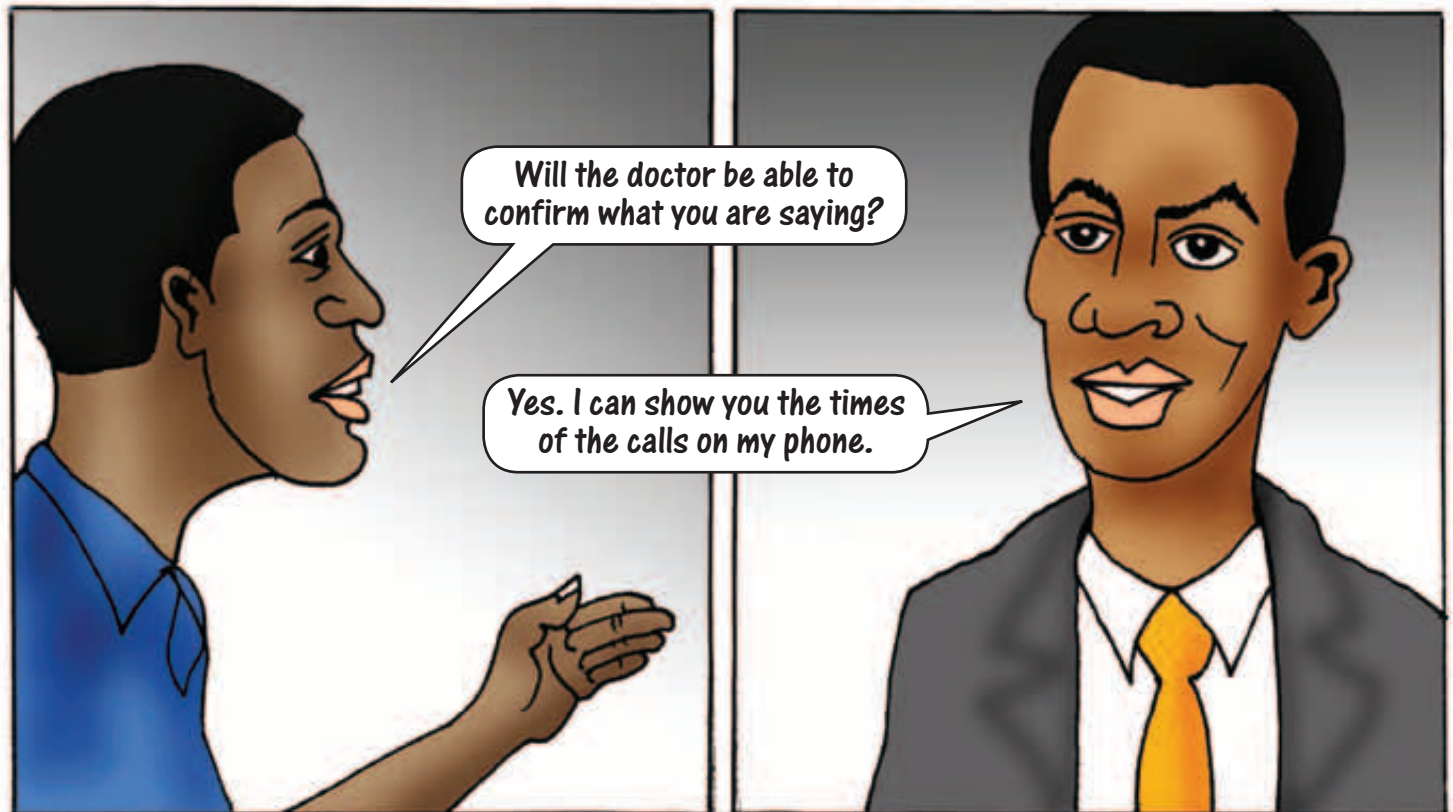


You have been arrested on suspicion of raping Elissa Mabena today.

There must be a mistake. I was in a meeting this afternoon.

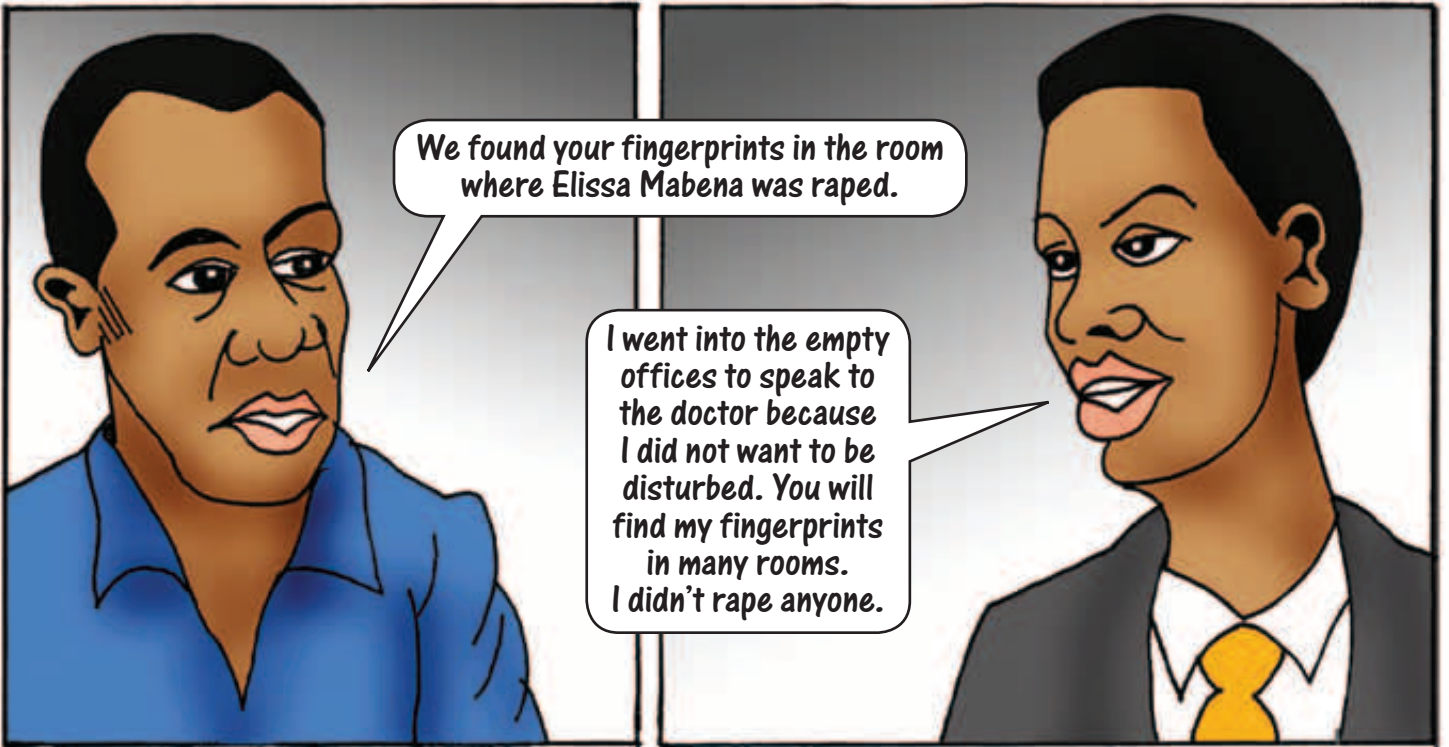
Meme Mabena does not know who raped her because the rapist attacked her from behind and threatened to kill her if she looked at him. Your colleagues say you left the meeting several times today. Do you have an explanation?

Yes. My son is very sick and I asked the doctor to phone me. I left the meeting to speak to him in private.



Will the doctor be able to confirm what you are saying?

Yes. I can show you the times of the calls on my phone.



We found your fingerprints in the room where Elissa Mabena was raped.

I went into the empty offices to speak to the doctor because I did not want to be disturbed. You will find my fingerprints in many rooms. I didn't rape anyone.

It could be months before the case goes to court.

If I have to stay in jail I will lose my job. I support my family and pay the rent. My son's medical bills are expensive. Is there anything we can do?

We can apply for bail. You will have to pay money to the court to prove you intend to come to the trial. If you attend the trial you will get the money back. The judge will also set bail conditions. These are rules you must follow, such as not contacting the complainant. But you will be able to live at home and go to work until the trial.

Chief Inspector, why should this rapist be granted bail?

The Namibian Constitution says all persons are innocent until proven guilty. Accused persons should be able to continue their lives until the trial is finished. Keeping the accused in jail before the trial is a harsh measure that should only be used when the accused may run away, may be a threat to the witnesses or may be a danger to other people.

But what if the accused threatened to harm the victim if she reported the crime?

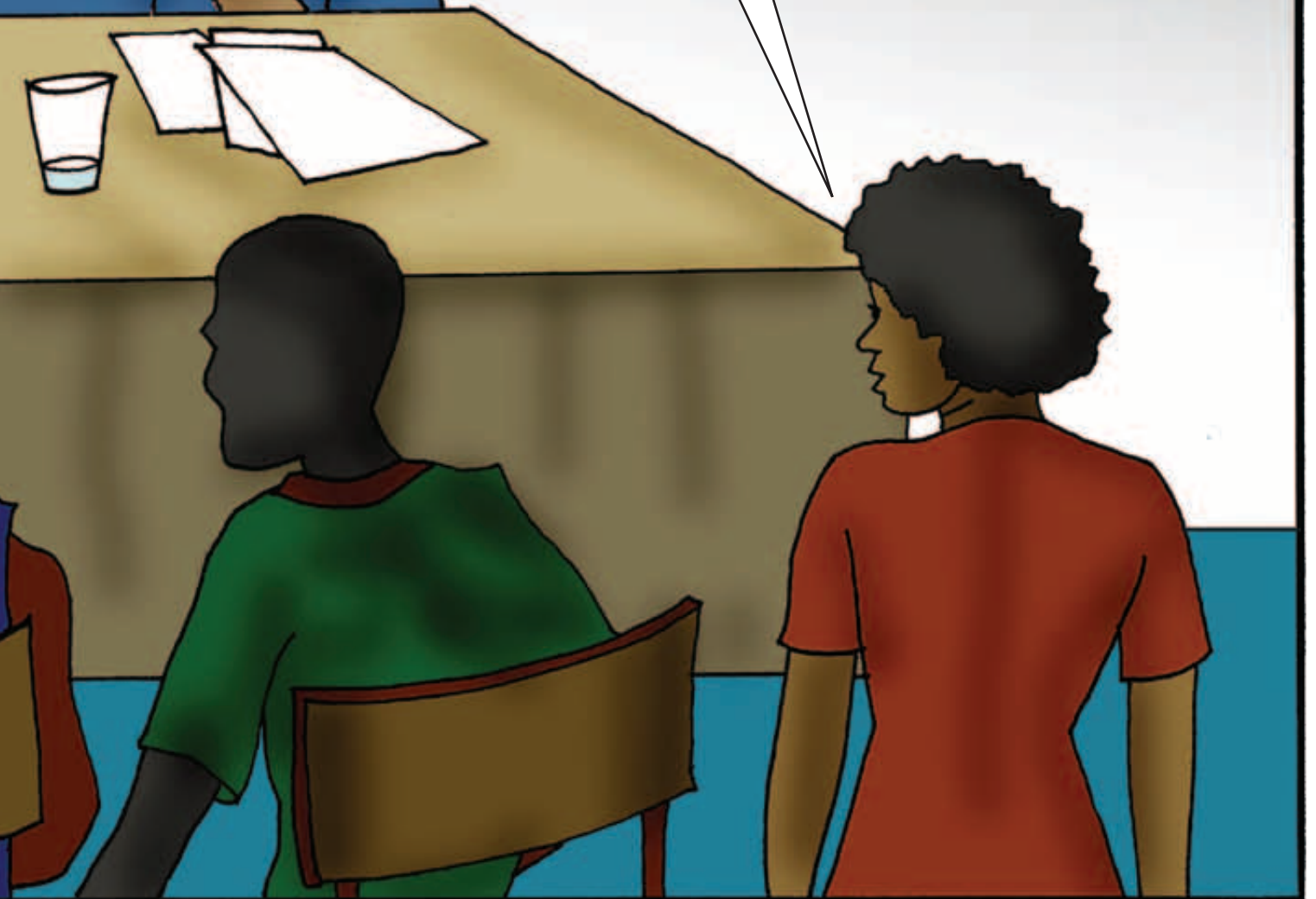


PRESS CONFERENCE

If the accused threatened the victim, the victim should inform the prosecutor. The prosecutor will include this information at the bail hearing. The judge will then decide whether or not to grant bail.

If bail is granted, the bail conditions are intended to protect the victim and the community. Because this is a rape case, the judge will order the accused not to contact the complainant. If the bail conditions are broken, the accused could be arrested and face a fine or up to one year in prison.

I am the wife of the accused. I know that my husband is innocent. Now I understand why people are granted bail before the trial. It would be wrong to keep someone in prison unless there is a reason to. My husband is not a danger to society.





THE BAIL PROCESS

WHAT HAPPENS AT A BAIL HEARING?

The prosecutor will ask the judge to consider whether bail should be granted. He will tell the judge about the circumstances of the crime. Then the prosecutor and the accused's lawyer will make recommendations to the judge about granting bail and setting bail conditions.

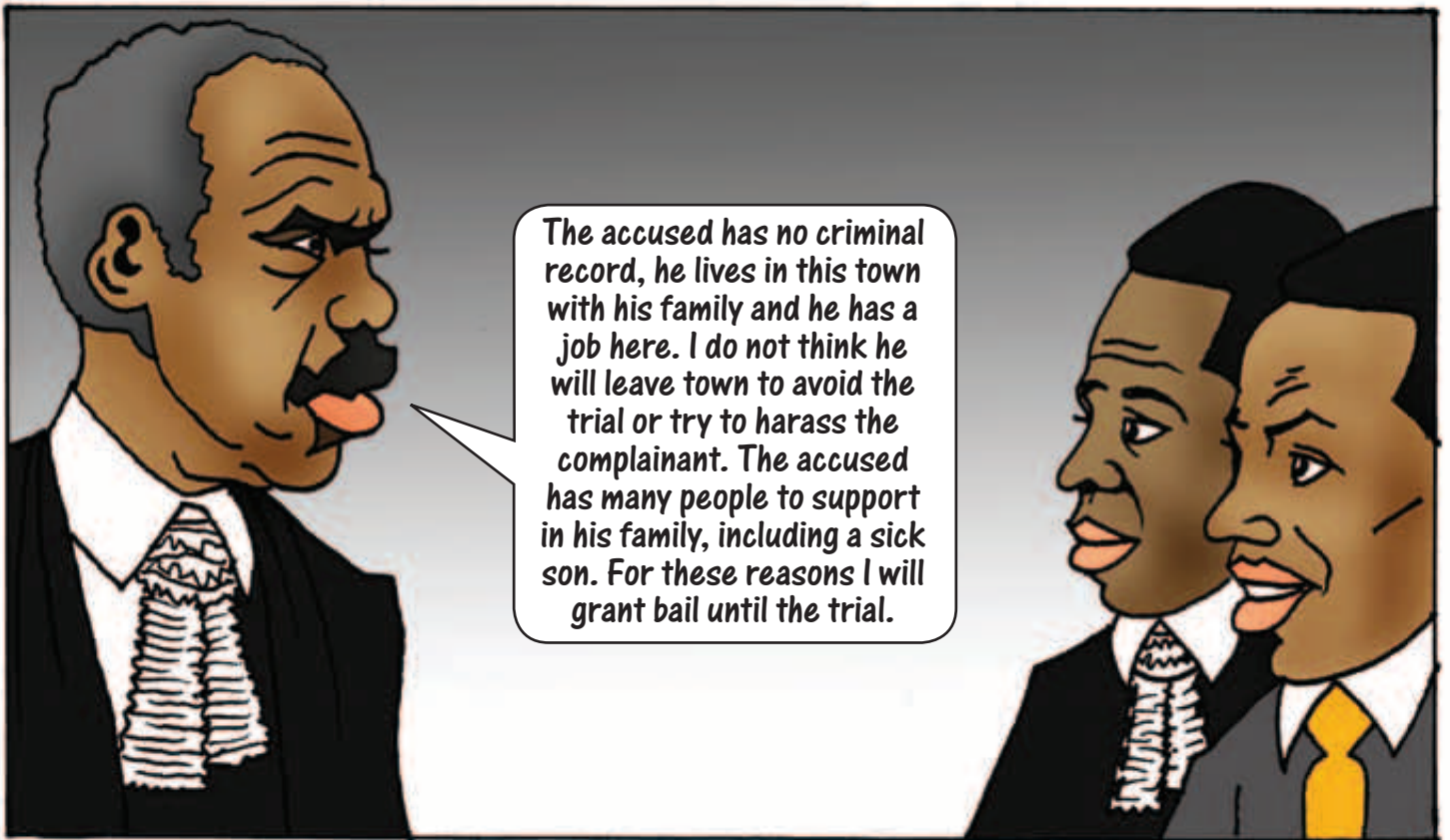
The police have a duty to inform the complainant of the court date for the bail hearing. The complainant has a right to attend the bail hearing to make sure the judge gets all the relevant information. The complainant also has the right to ask the prosecutor to present relevant information or evidence at the bail hearing, such as whether the complainant has a reason to be afraid if the accused is released on bail.

In rape cases, the accused must convince the court that he or she should be released. In the most serious rape cases, such as gang rape or rape of a child, the accused must show there are exceptional reasons why he or she should be released.

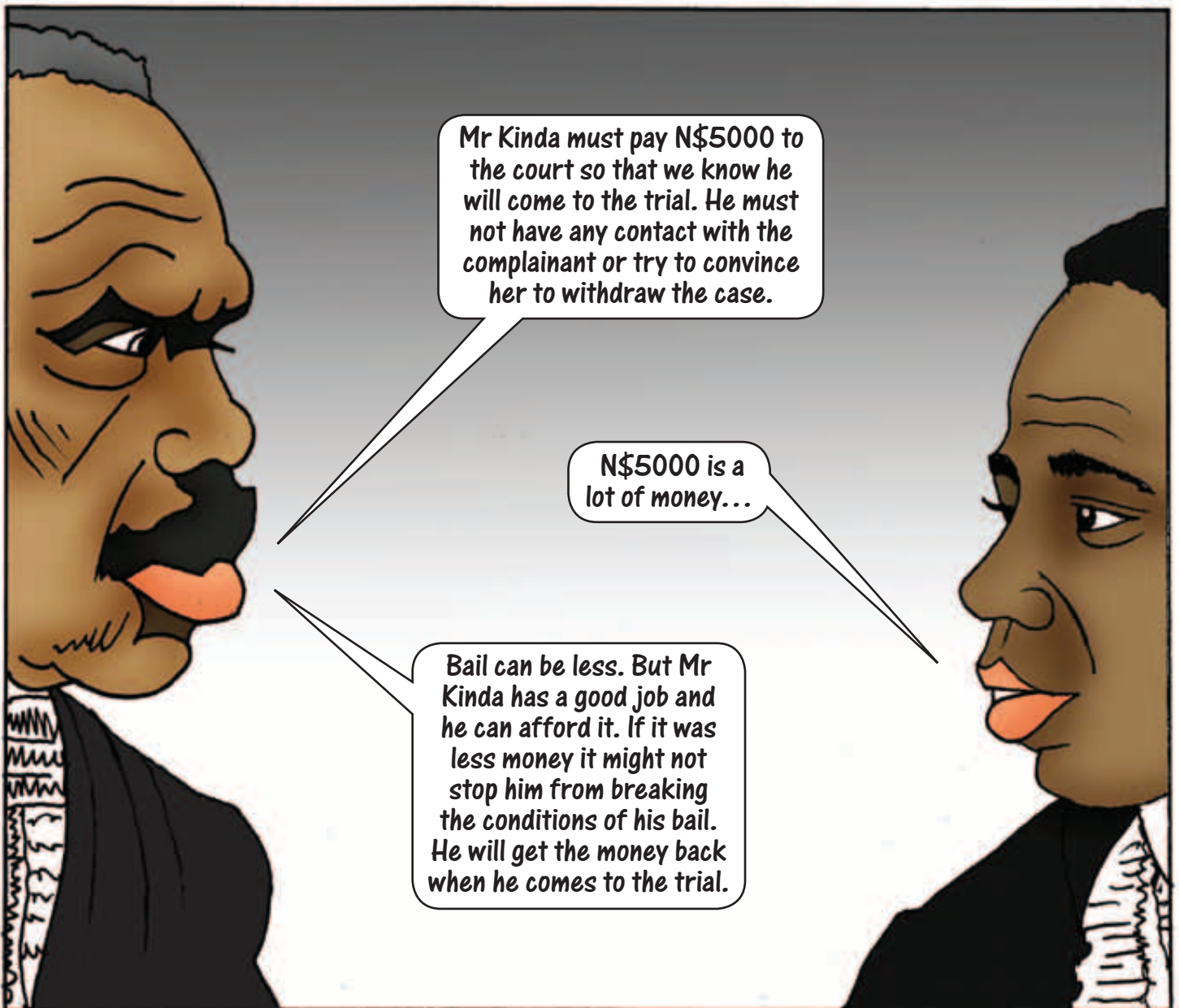
If the complainant does not attend the bail hearing, the prosecutor has a duty to tell the complainant if the accused is released on bail and about any conditions that were imposed.

THERE ARE TWO REQUIREMENTS FOR BAIL:

1. The **accused pays money** to the court. This is to make sure the accused returns to court – if he does not attend the trial, the government will keep the money and the police will arrest the accused. The amount of money for bail will vary depending on the circumstances.
2. The **judge sets conditions** on bail to monitor the accused and keep the community safe. Conditions are rules that the accused must promise to follow. In cases of rape, the court **MUST** add conditions to make sure the accused will not contact the complainant.



The accused has no criminal record, he lives in this town with his family and he has a job here. I do not think he will leave town to avoid the trial or try to harass the complainant. The accused has many people to support in his family, including a sick son. For these reasons I will grant bail until the trial.



Mr Kinda must pay N\$5000 to the court so that we know he will come to the trial. He must not have any contact with the complainant or try to convince her to withdraw the case.

N\$5000 is a lot of money...

Bail can be less. But Mr Kinda has a good job and he can afford it. If it was less money it might not stop him from breaking the conditions of his bail. He will get the money back when he comes to the trial.



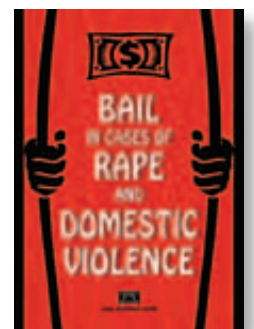
The case went to trial later that year. Gabriel was shown to be innocent and the police continued to look for the rapist. One month after the trial another suspect was arrested. At his trial, the suspect was found to be guilty of the crime.

WHY BAIL IS IMPORTANT

- Being accused of a crime is not the same thing as being guilty of a crime.
- There is often a long delay between arrest and trial. Without bail, an accused person could spend months or years in custody. This could cause some accused persons to lose their job and their home. If people who are arrested are innocent, this would mean they are being punished for something they did not do.

“All persons charged with an offence shall be presumed innocent until proven guilty according to the law, after having had the opportunity of calling witnesses and cross-examining those called against them”.

– Namibian Constitution, Article 12(1)(d)



DO YOU
... HAVE A QUESTION?
... HAVE A COMMENT?
... NEED MORE INFORMATION?

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We would like to hear your feedback about this comic.



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An electronic version of this publication is available on the LAC website: www.lacorg.na

For more information see the LAC booklet entitled **Bail in Cases of Rape and Domestic Violence**, available in print and on the LAC website.