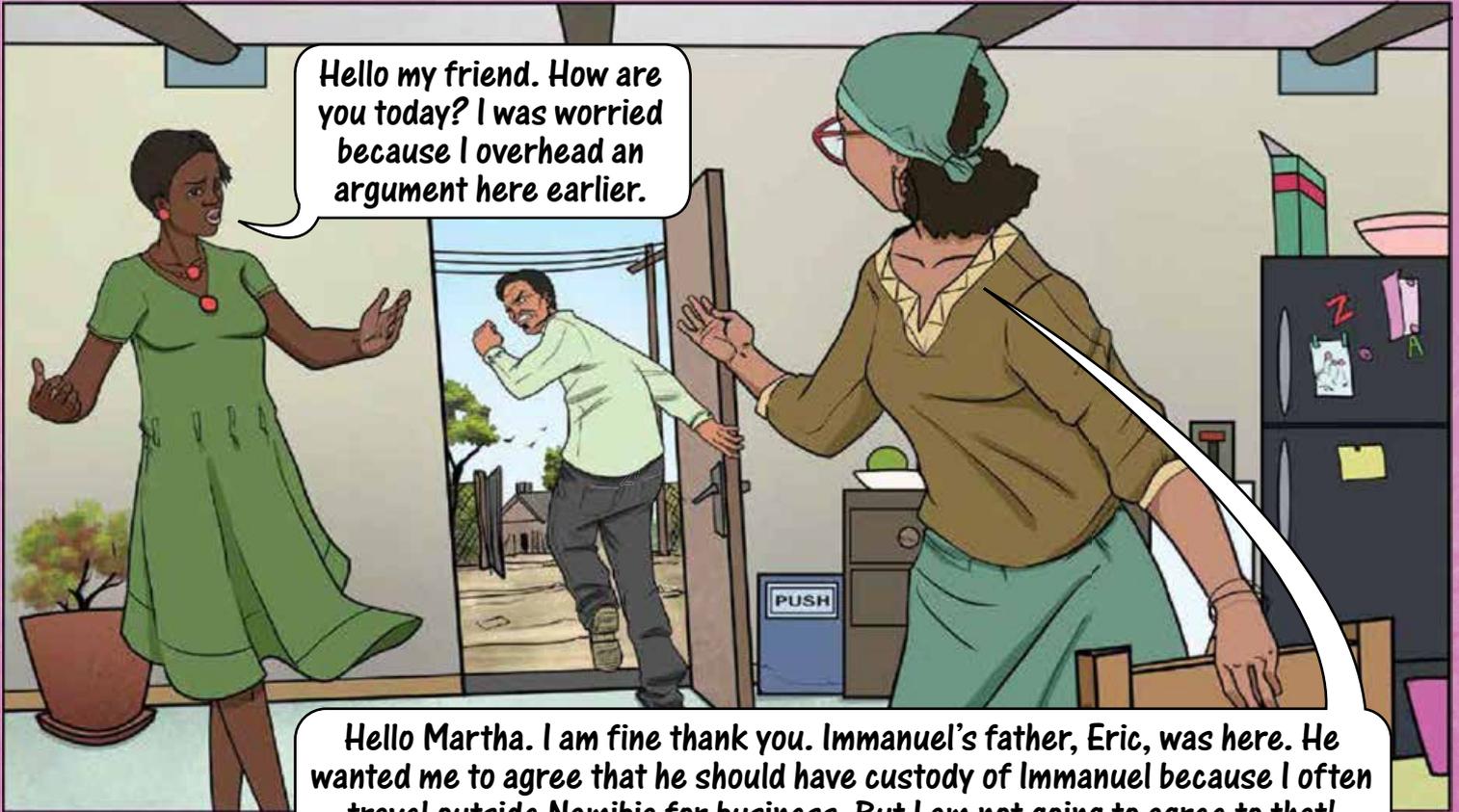


# PUTTING THE CHILD FIRST

## Parental rights and responsibilities for children born outside marriage

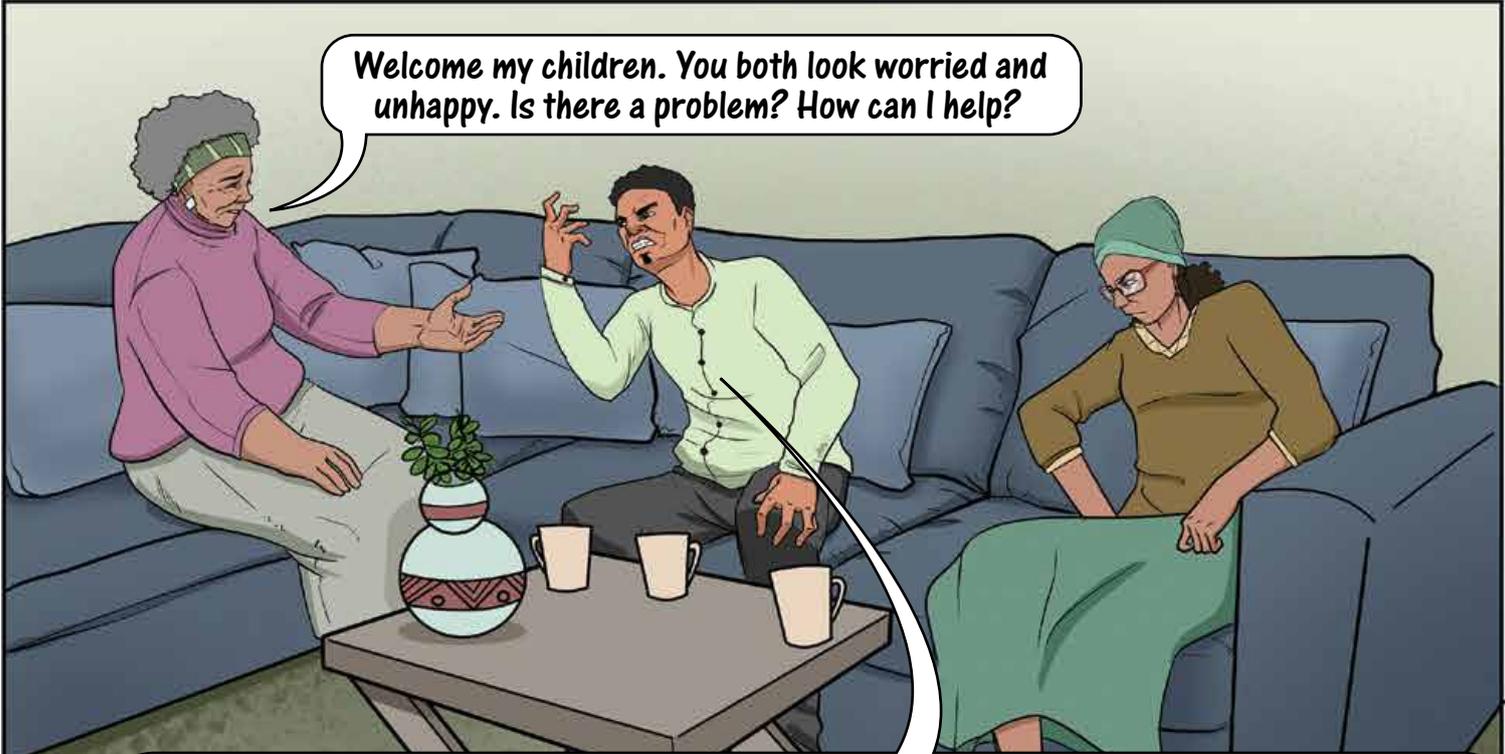


Hello Martha. I am fine thank you. Immanuel's father, Eric, was here. He wanted me to agree that he should have custody of Immanuel because I often travel outside Namibia for business. But I am not going to agree to that!



Oh dear, I understand how you feel. But even though you and Eric are not married, you are both Immanuel's parents and you both have rights and responsibilities over your child.

But how can we share those responsibilities when we don't even stay together? Eric is a man, how can he take care of Immanuel? I know that Eric and my mom always had a good relationship, maybe we should ask her for advice.



Welcome my children. You both look worried and unhappy. Is there a problem? How can I help?

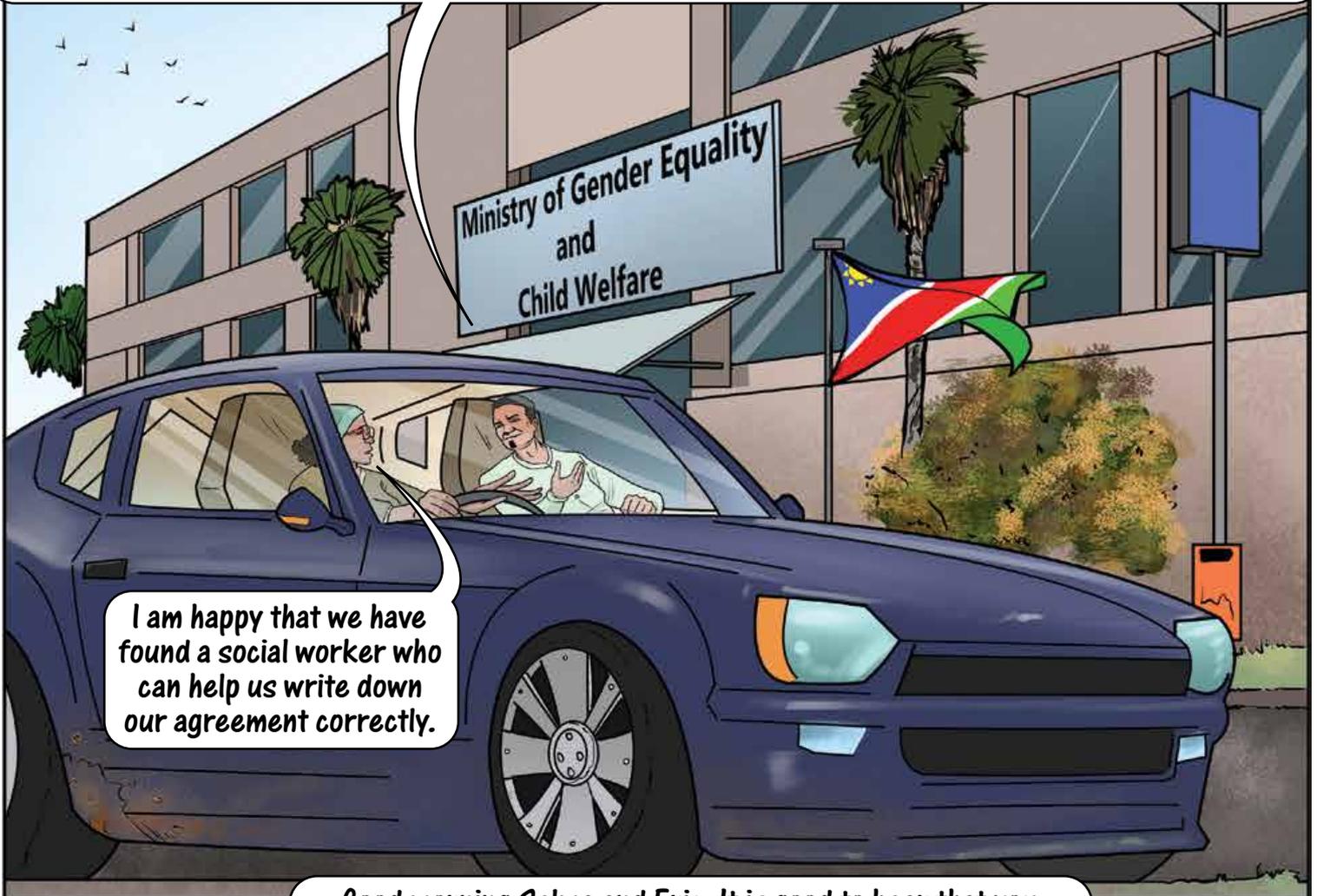
Hello Meme Ruth. It's about Immanuel. We both love him but we can't agree on who should have custody. Selma is travelling a lot with work and leaving him with a nanny that she employs. I am not comfortable with that. I think that it would be better if I had custody. My elder sister lives with me and is in a better position to take care of him. What do you think?

This disagreement should not be difficult to solve because you are both good parents. The two of you can make a written agreement about which one of you will take primary responsibility for looking after Immanuel. I attended a LAC training session where they talked about the new children's law. According to the Child Care and Protection Act, you both have equal rights to become his custodian. But you have to choose. If you cannot agree, you can ask the children's court to decide. If you do make an agreement, you can register it with the court if you both want to take that step. The most important thing is to think about what is best for Immanuel.



An agreement seems like a good idea. I would like to try that. If our plan does not work out well, we could change our agreement or apply to the children's court for a ruling on who should have custody. Let's start the process now, Eric!

I am glad that we have now agreed that you are going to be Immanuel's custodian. I think that this will be in our child's best interests. It will give me peace of mind to know that Immanuel is safe and well cared for in your home while I am travelling for my business. When I return, I will come and spend time with him.



I am happy that we have found a social worker who can help us write down our agreement correctly.

Good morning Selma and Eric. It is good to hear that you have made an agreement about your child. Avoiding family conflict is usually better for children. And it will be best for Immanuel to spend time with both of his parents in this case.

Ministry of Gender Equality  
and  
Child Welfare

We would like you to shed more light on access rights now that we have agreed on custody.

Yes, I want to understand what rights I have to visit Immanuel and if there are any restrictions.



If Eric is the custodian, Selma will still have a right of reasonable access to Immanuel. This usually includes both communication and personal visits.

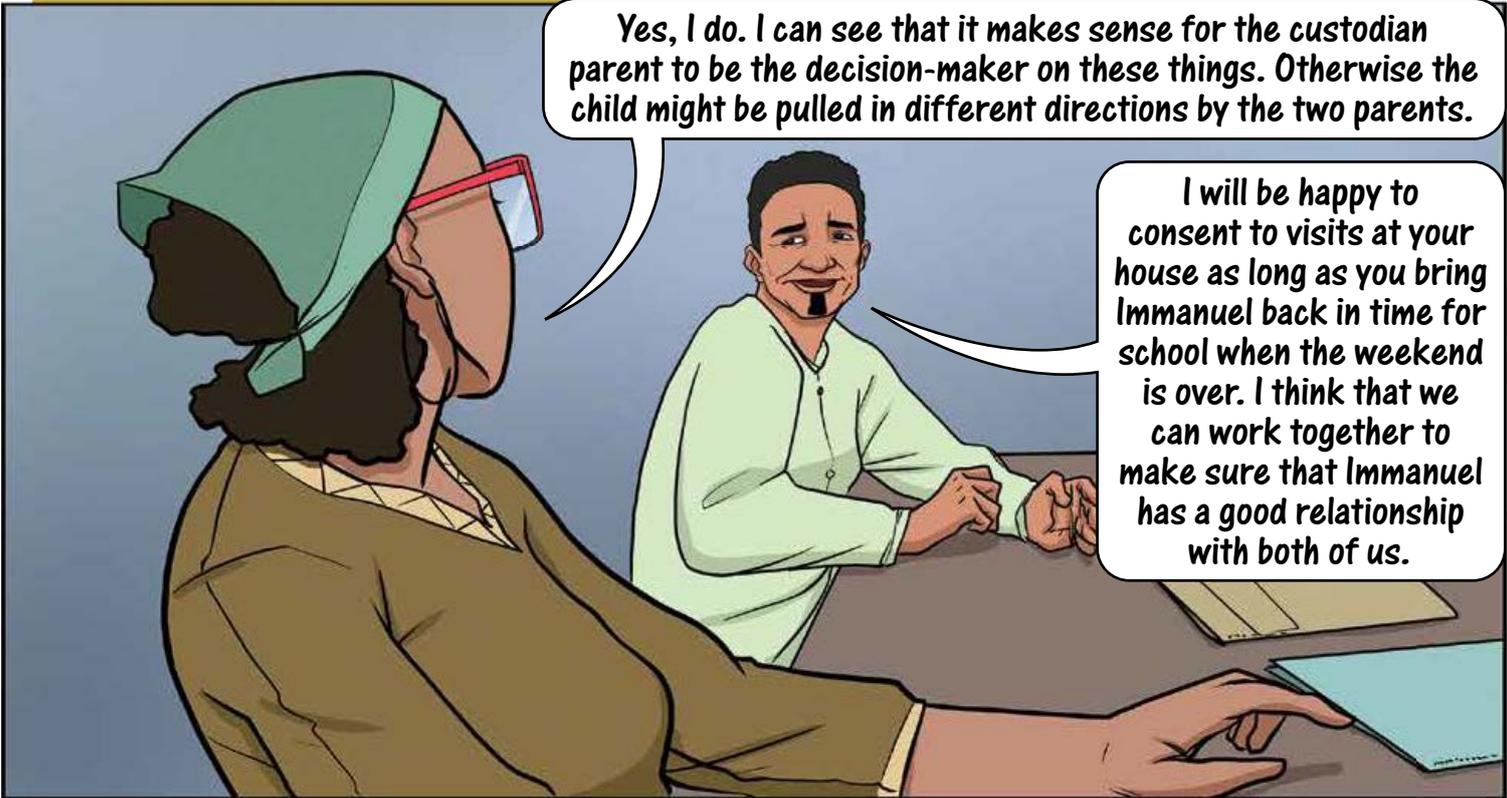


So, does that mean I can take Immanuel home for weekends whenever I want?

No. Access means that you can visit Immanuel, but you do not have the right to remove him from his home without Eric's consent. Your right of access is subject to Eric's reasonable control as the child's custodian. Do you understand, ma'm?

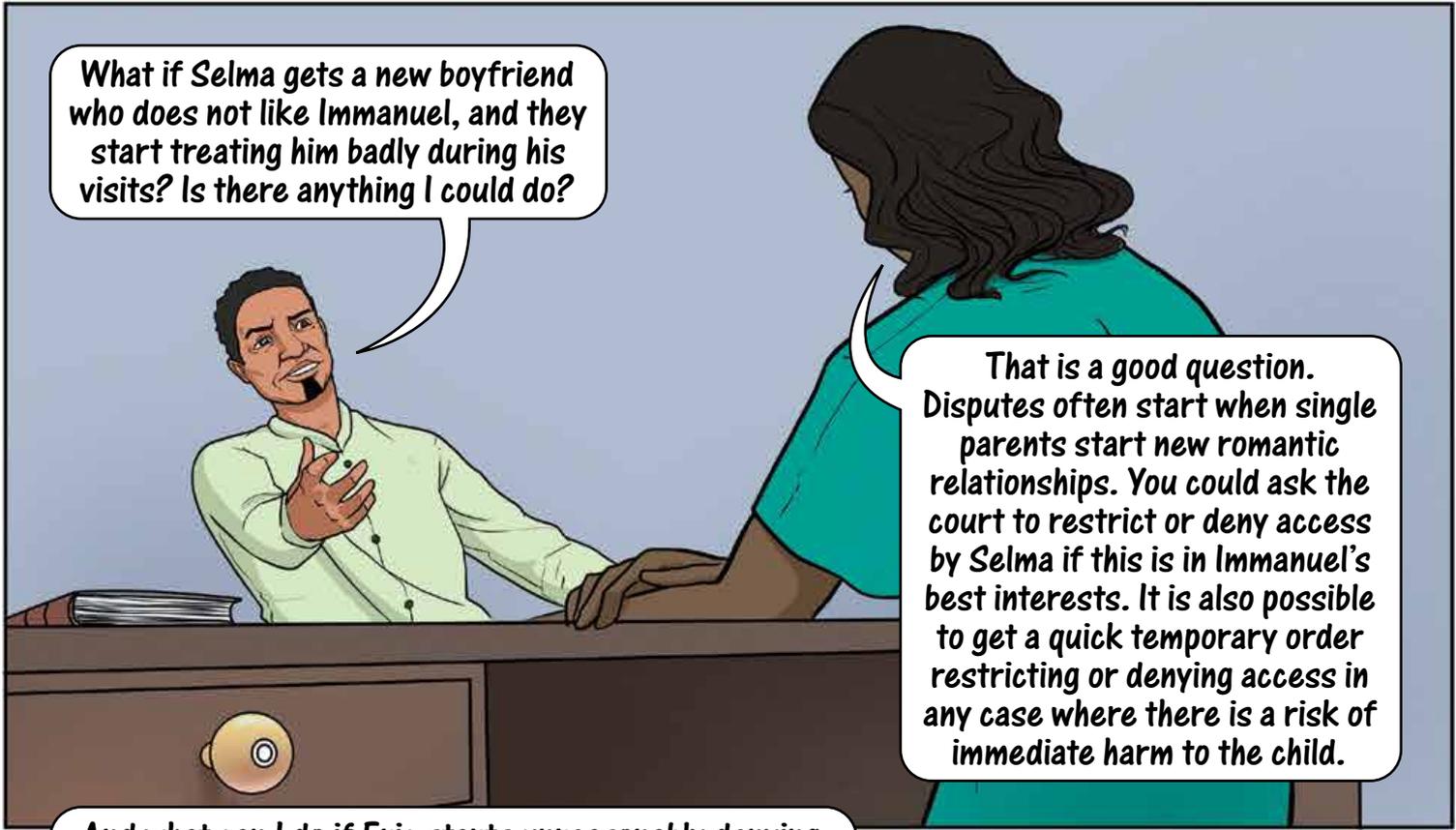


Yes, I do. I can see that it makes sense for the custodian parent to be the decision-maker on these things. Otherwise the child might be pulled in different directions by the two parents.

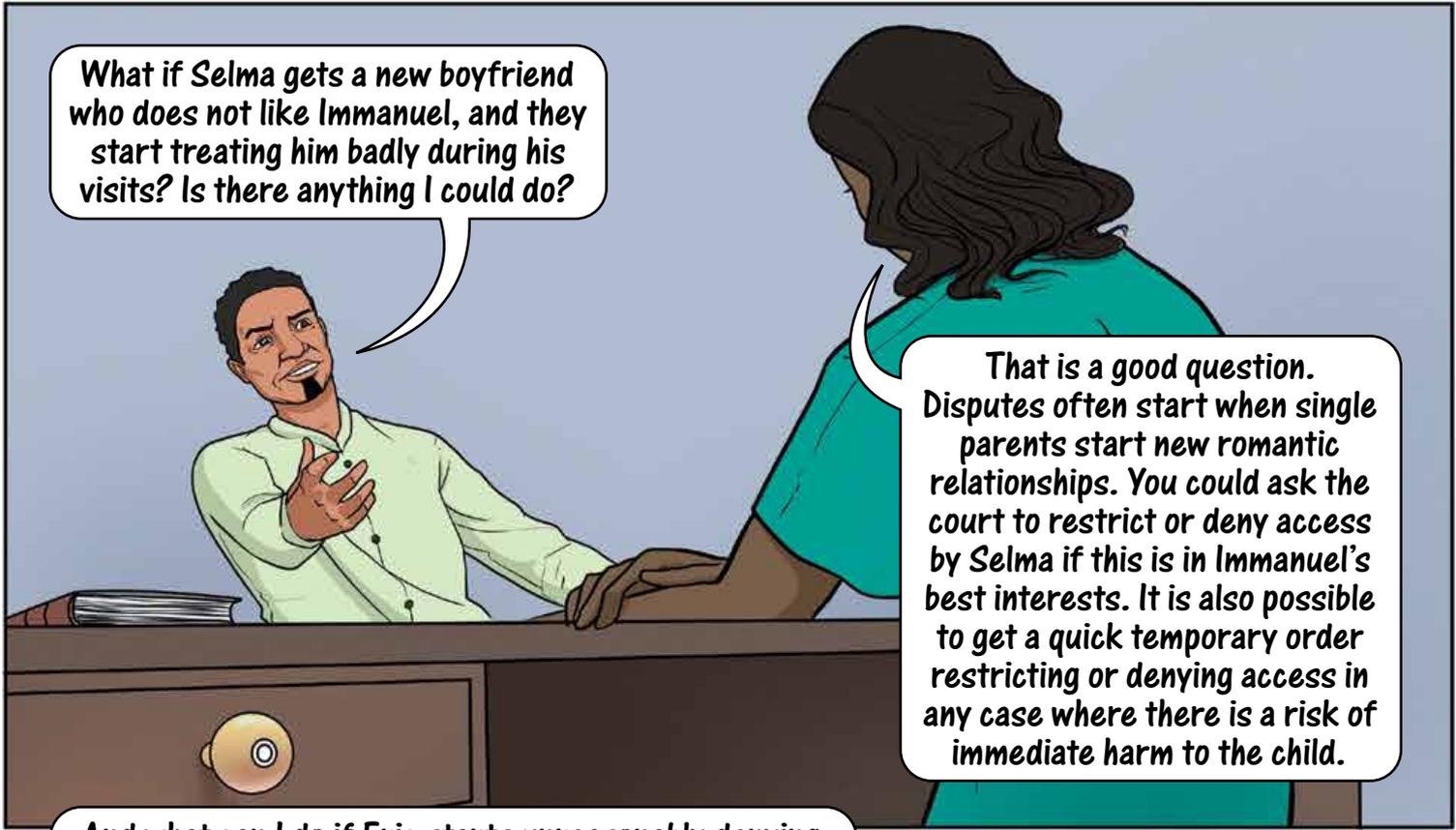


I will be happy to consent to visits at your house as long as you bring Immanuel back in time for school when the weekend is over. I think that we can work together to make sure that Immanuel has a good relationship with both of us.

**Automatic access:** If parents of a child are not married one parent will normally be the custodian and guardian, and the other parent will have a right of reasonable access. The parents can make a written agreement about this, or ask the children's court to decide.



What if Selma gets a new boyfriend who does not like Immanuel, and they start treating him badly during his visits? Is there anything I could do?



That is a good question. Disputes often start when single parents start new romantic relationships. You could ask the court to restrict or deny access by Selma if this is in Immanuel's best interests. It is also possible to get a quick temporary order restricting or denying access in any case where there is a risk of immediate harm to the child.



And what can I do if Eric starts unreasonably denying or restricting my contact with Immanuel? He might get a new girlfriend who wants to keep me away!



Well, in that case you can apply to the court to enforce your access rights. The court can make an order that sets out details about contact and visits, to prevent arguments.



Whenever there is a dispute between parents, a social worker will investigate to gather the facts before the court makes any decision. The court will make an order that serves the child's best interests.

Social worker

One week later ...

Immanuel must be excited to go and live with his father. What does it mean for his relationship with you and Meme Ruth?

Children's relationships with their extended family members are important. Eric wants what is best for Immanuel. But if there is a problem later on, my mother can apply to the children's court for an order giving her a right to spend time with her grandson. The court will allow her access to Immanuel if this is in Immanuel's best interests.

That sounds fair! How about maintenance? Does this mean that Eric will now be solely responsible for Immanuel's maintenance while you keep all your money for yourself?

Ha! No, Martha. Children have a right to be maintained by both of their parents. Both parents must share the expenses, depending on their financial means. I still have a responsibility to contribute to Immanuel's maintenance, and I must support Immanuel if Eric is not able to.

That sounds perfect! Now you and Eric can both spend time with Immanuel and help each other provide for his needs.

**Maintenance:** Children born inside or outside marriage must be treated the same when it comes to maintenance. Both parents must contribute to a child's maintenance on the basis of their financial means, no matter who has custody. This duty passes to other immediate members if the parents are unable to support the child.



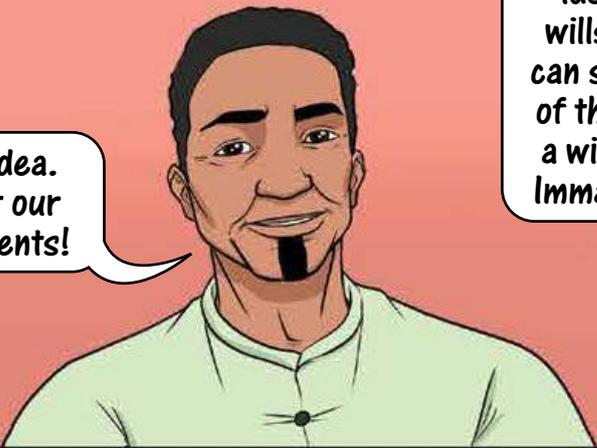
Eric, I would like to understand better what would happen with inheritance if you died, since neither of us has made a will.

Remember, the social worker said that children born outside marriage can inherit from their father's estate even if there is no will. This means that Immanuel would still inherit from my estate if I died.



That is good to know. But it is a good idea for both of us to make written wills. A parent with custody of a child can say in the will who should take care of the child if they die. You could make a will saying that I should take care of Immanuel if something happens to you.

That is a good idea. Let's make that our next task as parents!



One year later ...

I am happy that we came up with a plan that works for everyone. Disagreements between parents can be very upsetting for children!



## Namibian Constitution, Article 15(1):

**“Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interests of children, as far as possible the right to know and be cared for by their parents.”**

The best interests of the child is the key factor. Children have a right to have contact with both of their parents, as long as this is in their best interests. Parents have a duty to care for, protect and support their children. Children born outside marriage have the same rights as children born inside marriage.

For more information about custody of children born outside marriage, contact the Legal Assistance Centre at SMS 081 600 0098.

If you have a comment or question about this comic, contact the Legal Assistance Centre:

**SMS: 081 600 0098**

We would like to hear your **FEEDBACK** about this comic.

An electronic version (PDF) of this publication is available on the LAC website: [www.lac.org.na](http://www.lac.org.na)



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