

IN THE LOCAL COURT  
LIVERPOOL

MAGISTRATE PROWSE

5

FRIDAY 5 JUNE 2015

10 **LIVERPOOL CITY COUNCIL v Nosir KABITE**  
**LIVERPOOL CITY COUNCIL v Reuben MATTHEWS**  
**LIVERPOOL CITY COUNCIL V ACCUSED CANNULI**

OFFENCE Use place as waste facility

15 Mr Accoto for the council  
Accused Kabite appears in person  
Accused Matthews appears in person  
Accused Cannuli appears in person

20

HIS HONOUR: Next?

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ACCOTO: Might I mention the matters of - they're related matters, Matthews, Cannuli and Kabite.

HIS HONOUR: What was the other surname?

ACCOTO: Matthews, Cannuli, with a "C"--

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HIS HONOUR: Yes.

ACCOTO: --and Kabite with a "K".

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HIS HONOUR: Yes, there it is. Yes?

ACCOTO: Accoto is my name--

HIS HONOUR: Who for?

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ACCOTO: Liverpool Local Council City council. I'm prosecutor today your Honour.

HIS HONOUR: That's good.

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ACCOTO: They are all here I'm told, and I'm told that they would like to have some discussions. I simply mention the matters, if they could stand for a short period of time.

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HIS HONOUR: Okay.

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MATTER STOOD IN LIST

HIS HONOUR: Now Mr Accoto?

5 ACCOTO: Thanks your Honour. If I could re-mention the matters of--

HIS HONOUR: Cannuli and Kabite--

ACCOTO: Kabite--

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HIS HONOUR: Mm.

ACCOTO: --Cannuli and Matthews. They're all before the Court. I've had an opportunity to speak with each of them. They are each unrepresented and they want the matter to be finalised today.

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HIS HONOUR: Mr Matthews, Mr Cannuli and Mr Kabite, you need to come over to the microphone please. So, which one are you?

20 ACCUSED KABITE: Kabite.

HIS HONOUR: Okay, good. Mr Cannuli? You move into the middle and you're Mr Matthews.

25 ACCUSED MATTHEWS: Yes.

HIS HONOUR: Right, good. Mr Kabite do you have a lawyer appearing for you?

30 ACCUSED KABITE: No.

HIS HONOUR: Do you want an adjournment to go and speak to a lawyer?

ACCUSED KABITE: No.

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HIS HONOUR: Mr Cannuli do you have a lawyer appearing for you?

ACCUSED CANNULI: No.

40 HIS HONOUR: Do you want an adjournment to go and see a lawyer?

ACCUSED CANNULI: No.

HIS HONOUR: And Mr Matthews, do you have a lawyer?

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ACCUSED MATTHEWS: No.

HIS HONOUR: Do you want an adjournment to go and see one?

50 ACCUSED MATTHEWS: No.

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HIS HONOUR: Right. Mr Kabite do you know why you're here?

ACCUSED KABITE: Yes your Honour.

5 HIS HONOUR: Well you've got two choices, essentially after this, you can either plead not guilty or guilty.

ACCUSED KABITE: Guilty.

10 HIS HONOUR: Mr Cannuli, you've got two choices, do you know why you're here?

ACCUSED CANNULI: Yes.

15 HIS HONOUR: All right, you've got two choices after that, you can either plead not guilty or guilty?

ACCUSED CANNULI: Guilty.

20 HIS HONOUR: And Mr Matthews, do you know why you're here?

ACCUSED MATTHEWS: Yes your Honour.

25 HIS HONOUR: You've got two choices after that, you can either plead not guilty or guilty?

ACCUSED MATTHEWS: Guilty.

30 HIS HONOUR: Right. We'll get the information from the Crown.

ACCOTO: I tender a statement of facts together with some photographs, they've been shown to each of the offenders, I've read it to each of the offenders, I've offered each of the offenders an opportunity to go away and get legal advice. They wish to proceed.

35 HIS HONOUR: Do you have another two copies?

ACCOTO: Yes.

40 HIS HONOUR: Because there are three separate files--

ACCOTO: Yes there are, your Honour's quite right.

45 HIS HONOUR: --one might go to the High Court, one might go to the Federal Court and the other one might only go to the Court of Appeal.

ACCOTO: Yes, thank your Honour. For the sake of convenience, the facts are identical.

50 HIS HONOUR: All right. The penalty - does that say anywhere in your

statement of facts or what's--

ACCOTO: Penalty for each of the offences - \$250,000 although in this jurisdiction limited to 110.

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HIS HONOUR: Thousand?

ACCOTO: Yes.

10 HIS HONOUR: And that's for each of the three matters?

ACCOTO: Yes and the relevant sections, if your Honour requires a copy of them, I'm happy to hand them up.

15 HIS HONOUR: All right. So there's a jurisdictional limit of which?

ACCOTO: The jurisdiction under the Protection of the Environment Operations Act, when a matter is dealt with in this jurisdiction, is limited to 1,000 penalty units that is \$110,000 that's section 215--

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HIS HONOUR: No, that's okay, I just really wanted you to say it again so the maximum penalty is?

ACCOTO: \$250,000 but \$110,000 in this jurisdiction.

25

HIS HONOUR: How many penalty units is it?

ACCOTO: I'll give it your Honour in penalty units. Your Honour it's not expressed as penalty units in the Act.

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HIS HONOUR: Okay--

ACCOTO: It's expressed as - in the case of a corporation a million dollars, in the case of an individual, \$250,000.

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HIS HONOUR: Okay. Right, so, but the jurisdictional limit is a thousand penalty units?

ACCOTO: The jurisdictional limit is referred to as - in penalty units indeed, 215 subsection 2 says a thousand penalty units.

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HIS HONOUR: Very interesting. All right, thanks for that.

ACCOTO: I'll also be inviting your Honour at the conclusion of these matters--

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HIS HONOUR: Yes?

ACCOTO: --to make an order under the same piece of legislation, it's an order under section 245, it's effectively a clean-up order and I can provide your Honour with the legislative basis--

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HIS HONOUR: Well, that might be a good idea.

ACCOTO: Would your Honour like that now?

5 HIS HONOUR: Yes thanks.

ACCOTO: Your Honour will see that section 245 allows the Court to make an order, that's the first document your Honour has. The second document defines the Court as the Court which either convicts or finds the offence  
10 proved.

HIS HONOUR: Mm.

ACCOTO: So this Court by virtue of both sections, is empowered to effectively  
15 make an order for specific performance.

HIS HONOUR: How is that Mr Cannuli is the occupier but Mr Matthews is the owner? Do you know?

ACCOTO: Council say that he has been on the land since the 70's. We don't  
20 know whether that's by way of licence or lease but that's on council's case, as a result of - and it's contained in the facts, as a result of a conversation that was had between Cannuli and one of the council officers.

25 HIS HONOUR: Where precisely is this? Out at Luddenham, right.

ACCOTO: Sorry your Honour?

HIS HONOUR: Just discovered the address--  
30

ACCOTO: The address is at the top of the fact--

HIS HONOUR: Yes, that's--

35 ACCOTO: --405--

HIS HONOUR: Is the council seeking anything else?

ACCOTO: No, no further orders your Honour. We're asking that the matters  
40 be concluded today and that the order pursuant to section 245 also be made.

HIS HONOUR: Does that have a time frame specified?

ACCOTO: I was hoping to - well your Honour, by way of assistance--  
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HIS HONOUR: Yes--

ACCOTO: --I've got a proposed order, I hate to usurp your Honour's authority,  
50 I don't like doing that, but this may assist.

HIS HONOUR: No--

5 ACCOTO: It's reading of an order that your Honour may adopt, it's a reading that is used on a day to day basis for these types of orders. Your Honour will notice that I've left out the dates.

HIS HONOUR: Have you three gentlemen seen this?

10 ACCOTO: No. I haven't shown them the document but I've explained, I've explained the document to them. I've explained that someone would be appointed, they would come along, examine the field, the asbestos, formulate a plan, it would go back to council, and the works would have to be done.

15 HIS HONOUR: Against which person should the order be made?

ACCOTO: To made against all three and I'd be asking your Honour to make it against all three.

20 HIS HONOUR: Well, which of you three gentlemen wish to make submissions as to penalty first? What about you Mr Matthews, seeing as you're the owner of the land? What would you like to say about penalty, in that you're facing a maximum fine of \$110,000? It's not the maximum fine but that's the most that you can get.

25 ACCUSED MATTHEWS: Well I'm happy just to clean the land up and get the dirt out and bring it back to normal.

30 HIS HONOUR: Well as you're the owner, but you're not the occupier. So, how does that happen?

ACCUSED MATTHEWS: I'm sure that the people who brought it in, will take it out--

35 HIS HONOUR: Obviously, but if you're the owner of it, but not the occupier of the land what arrangement do you have with Mr Cannuli for him to occupy the land?

ACCUSED MATTHEWS: I'm the owner, and I occupy it.

40 HIS HONOUR: Well how does Mr Cannuli become involved?

45 ACCUSED MATTHEWS: He's just a friend that was going - we were going to build a couple of greenhouses and I knew you'd have to have to DA for greenhouses, but not for soil. But now I know you've got to have a DA for soil too. He's just a friend, he doesn't live there.

50 HIS HONOUR: All right, so do you want to say anything else about the matter because it's a bit more than just taking soil away. It's remediating it. I think that's the word they use isn't it? Yes, remediate. In that test results were conducted by the Environmental Protection Agency, and they found the

presence of asbestos, in all 11 samples retrieved from the land.

ACCUSED MATTHEWS: I've been made aware of that.

5 HIS HONOUR: Well that makes it even more serious doesn't it?

ACCUSED MATTHEWS: It does.

10 HIS HONOUR: It's not just a matter of shaking a bit of dirt on a block somewhere--

ACCUSED MATTHEWS: No, as it turns out.

15 HIS HONOUR: All right. So what's your income? What's your assets? How much are you worth? What's your capacity to pay a substantial fine?

ACCUSED MATTHEWS: Well, the law states I've got to be fined. I would like that fine to help take the dirt out.

20 HIS HONOUR: Yes but a fine is imposed as a penalty not as a - it's designed to penalise people as opposed to be utilised for a specific purpose determined by the person who's offended. There's also the costs of digging it all up, taking it away, remediating the land, engaging the relevant expert or occupational hygienist, just goes to show you how you can torture the English language, but  
25 there we are, to get it all done as well. It's not just a matter of slipping up to Hubbards Hire and, that's the place name, Coates Hire and getting a little front end loader and doing it on the back of a trailer on the weekend.

30 ACCUSED MATTHEWS: No.

HIS HONOUR: No.

ACCUSED MATTHEWS: It'll have to come out similar to the way it went in I should imagine.

35 HIS HONOUR: Yes. So, let's go back to the original enquiry, what's your income? Where do you get your money from? What are your assets?

40 ACCUSED MATTHEWS: I'm retired.

HIS HONOUR: Okay. Do you have an income?

ACCUSED MATTHEWS: I live off term deposits.

45 HIS HONOUR: We need to assess--

ACCUSED MATTHEWS: Which is a bit hard, a bit hard today. Where the interest rate is.

50 HIS HONOUR: Possibly, but one of the things I need to assess is your

capacity to pay a fine.

ACCUSED MATTHEWS: I would like time to pay it off.

5 HIS HONOUR: Capacity means the ability, not the length of time you might need to pay it in. That's a different issue.

ACCUSED MATTHEWS: If I had to pay it I could.

10 HIS HONOUR: Yes. So you can pay the \$110,000 fine then?

ACCUSED MATTHEWS: Yeah but it would leave me short. But yes I could pay it.

15 HIS HONOUR: Right. What would you like to say Mr Cannuli?

ACCUSED CANNULI: I've known Reuben and, and we looked at the land and I said to Reuben, "let's build some glasshouses on here".

20 HIS HONOUR: Whose Reuben?

ACCUSED CANNULI: Matthews.

25 HIS HONOUR: So you're named on this as Alan? Reuben Alan. Okay. Good. Yes?

30 ACCUSED CANNULI: And I said to him, "let's build some glass houses". "Yeah okay". The land's not straight and we got Nosir here to throw some dirt on to level it off and apparently what Nosir's put in was dirt which had some asbestos in it. So, my involvement in the whole thing is that I wanted to build the glasshouses with Reuben so we could make some money as we retired. That's the guts of it.

35 HIS HONOUR: Growing what?

ACCUSED CANNULI: Tomatoes.

HIS HONOUR: Okay fine.

40 ACCUSED CANNULI: Cucumbers.

HIS HONOUR: Tomatoes grow well out there given the fact that tomatoes usually grow--

45 ACCUSED CANNULI: Glass house, yes.

HIS HONOUR: -- better in cooler climates?

50 ACCUSED CANNULI: Glass houses, they grow that big--

HIS HONOUR: Yeah, well, okay, up at Giru which is nearly 4,000 feet above sea level as opposed to Luddenham, which is about one foot above sea level, they grow fantastic tomatoes up there, that's why I was asking.

5 ACCUSED CANNULI: Yeah, but they grow good tomatoes in Bundaberg and Bowen, but you know--

HIS HONOUR: Yes, true.

10 ACCUSED CANNULI: --but we can't get them out of there all the time.

HIS HONOUR: No, okay.

15 ACCUSED CANNULI: But glass houses we can work them 12 months of the year.

HIS HONOUR: Yes that's true and that's exactly what they're doing at Giru as well.

20 ACCUSED CANNULI: So that's basically the involvement that I've got in it, and - so--

25 HIS HONOUR: So how did you get on to Mr Kabite then in relation to this dodgy dirty?

ACCUSED CANNULI: Well I've known Nosir for a while, and I knew that he had some dozers which could level it off with--

HIS HONOUR: Yes?

30 ACCUSED CANNULI: --and I said "Can you organise some dirt"? He says "Yes I can", and away we went.

HIS HONOUR: And Mr Kabite, what would you like to say?

35 ACCUSED KABITE: I agree with Mr Cannuli your Honour.

HIS HONOUR: Where did you get the dodgy dirt from?

40 ACCUSED KABITE: From two, three different places.

HIS HONOUR: Sorry?

ACCUSED KABITE: Two, three different places.

45 HIS HONOUR: Mm?

ACCUSED KABITE: I called people who doing excavation and stuff, ..(not transcribable).. but we didn't know it's got asbestos or anything. Sorry.

50

HIS HONOUR: Were you buying the dirt from these people or were they giving it to you?

ACCUSED KABITE: No they gave it to me.

5

HIS HONOUR: Mm, you can probably work out why now can't you?

ACCUSED KABITE: Sorry?

10 HIS HONOUR: You can probably work out why now can't you?

ACCUSED KABITE: Yes. Yes your Honour.

15 HIS HONOUR: See some of the photos shows great lumps of things, I'm not quite sure what those things are, but that photo there, that looks like a bit of PVC piping for example, there's some other bits and pieces in - so it's not as though it's clean fill is it? What's your financial circumstances Mr Kabite?

ACCUSED KABITE: I got a truck your Honour and a small dozer.

20

HIS HONOUR: Yes. Doesn't tell me what your financial circumstances are though? What's your capacity to pay a fine?

ACCUSED KABITE: Not really good.

25

HIS HONOUR: I didn't ask you Mr Cannuli, what's your capacity to pay a fine?

ACCUSED CANNULI: Absolutely zero.

30 HIS HONOUR: Why's that?

ACCUSED CANNULI: I'm on a pension, 68 years old, and what can I say?

35 HIS HONOUR: Well probably that at the moment, but what sort of pension is it?

ACCUSED CANNULI: Aged pension.

40 HIS HONOUR: Okay. Well see that helps because there is all sorts of different sorts of pensions. Mr Crown, there are no records available?

ACCOTO: No records before the Court your Honour.

45 HIS HONOUR: What time frame is realistically contemplated? Six months?

ACCOTO: For the purposes of clean-up or for the purposes of--

HIS HONOUR: The 245 order. Specified in the order within such time, so this is all to be done, completed, finished, within six months?

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ACCOTO: Six months.

HIS HONOUR: Is that a realistic--

5 ACCOTO: I'm in your Honour's hands. That's a realistic timeframe.

HIS HONOUR: Yes.

10 ACCOTO: It's not an insubstantial amount of earth that needs to be removed.

HIS HONOUR: Mm. Well, they've got to engage this hygienist--

ACCOTO: Yes.

15 HIS HONOUR: --and get the plan prepared and all that sort of thing and it does allow for such further time if something goes wrong, or delays such as you know, that rain event that we had. Another one of those for example.

20 ACCOTO: Entirely appropriate your Honour. I accept that.

25 HIS HONOUR: Well taking into account that each of you have pleaded guilty at the first available opportunity, I take into account what is set out in the facts and the complaint was received by council as to 30 trucks a day dumping fill at a particular address. The authority officers not quite sure which authority, is that the EPA authority?

ACCOTO: No that's council authority.

30 HIS HONOUR: Council officers attended the land to inspect and speak and they spoke with you Mr Matthews. Mr Matthews told the council officer that you had received about a hundred truckloads of fill. You denied the officers entry to the land so on 4 March Mr Kabite was interviewed and he admitted transporting in excess of 200 tonnes of fill and dumping it on the land.

35 Mr Matthews was interviewed and admitted that the fill came from Mr Kabite who he had met through Mr Cannuli and whilst not being precise as to date he admitted - Mr Matthews admitted knowing of the ongoing dumping, allowing the dumping to take place on the land.

40 Mr Cannuli was spoken with, he has been in and around the place since 1970, although the precise nature of the licence/lease/permission for Mr Cannuli to be on Mr Matthews' land I am not quite sure of, but it certainly is at least, it would seem from today, partly based on friendship, if nothing else. Certainly  
45 Mr Cannuli came up with the otherwise very good idea to erect greenhouses for the purposes of growing vegetables but unfortunately went around it the wrong way. What is worse is that the Environmental Protection Authority have tested some of the soil, 11 samples, and in all 11 samples retrieved from the land contained asbestos.

50 Mr Kabite says he was approached by Mr Cannuli on behalf of Mr Cannuli and

Mr Matthews and then rang some people and unsurprisingly they offered him some fill. We now know why they were quite happy to receive a phone call from Mr Kabite, and why they were even more happy when Mr Kabite was taking it away. That just leaves the rest of the community appalled that such  
5 slack lackadaisical attitudes were taken to in the circumstances, what Mr Kabite by being in the industry must have known was dodgy dirt to use my own expression. In other words, if it was not being disposed of in some other way and you were getting it for free, it stands out like the pyramids that there must have been something dodgy about it.

10 It would appear that in the circumstances, Mr Matthews also must have known that there was something dodgy about it, because, as I said earlier, at least on one of the photos and in more, but in one of the photos there is a clear length of PVC piping emerging corpse like from the fill. That should have at the very  
15 least informed anybody taking notice as you are supposed to have been doing Mr Matthews, of the fact that there was something seriously wrong with the material that you were getting. Whilst you say that you knew you had to apply for a DA to erect the glasshouses I find it very strange that you did not know or make any enquiries at the very least as to whether you needed some sort of  
20 approval to have a hundred trucks worth of dump or fill just dumped on your land.

Taking into account that all three of you are not known, taking into account that all three of you are going to be burdened with the probably extensive cost of  
25 cleaning this up, and taking into account your varying levels of involvement and your varying levels of ability to pay financial penalties, the Court's opinion that Mr Matthews is the most complicit, Mr Kabite is the second most complicit and Mr Cannuli seems to be the go between and given his financial  
30 circumstances, whilst he is less complicit he is also got less capacity to pay.

SO MR MATTHEWS, YOU ARE CONVICTED AND FINED \$50,000. THERE IS A 245 ORDER MADE IN TERMS HANDED UP BY THE CROWN AND THE TIME FOR COMPLETION IS SIX MONTHS. IT CAN BE EXTENDED ON APPLICATION BUT AN APPLICATION ACTUALLY HAS TO BE MADE.  
35 MR CANNULI, TAKING INTO ACCOUNT YOUR FINANCIAL CIRCUMSTANCES AND YOU PRIMARILY WERE A GO-BETWEEN, YOU ARE CONVICTED AND FINED \$5,000. THERE IS A 245 ORDER MADE AGAINST YOU IN THE SAME TERMS AS MR MATTHEWS' WITH THE SAME TIMEFRAME. MR KABITE, YOU OBVIOUSLY SHOULD HAVE  
40 KNOWN BETTER GIVEN YOUR INVOLVEMENT IN THAT SORT OF INDUSTRY. YOU ARE CONVICTED AND FINED \$25,000. THERE IS A 245 ORDER MADE AGAINST YOU IN THE SAME TERMS AS THE ORDER MADE AGAINST MR MATTHEWS.

45 Thanks for coming each of you.

ACCOTO: Your Honour can I clarify one matter. Although the proposed order refers to Land, with a capital "L", it doesn't - on my omission, this is my  
50 oversight, I haven't specified the address, it's only specified in the facts, if we could perhaps add the words, after the word "Land" 405 Wilton--

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HIS HONOUR: I was going to say as per the fact sheet.

5 ACCOTO: --Wilton. As per the fact sheet. Thank your Honour. There's no further order sought and that concludes my matters your Honour if I could be excused.

HIS HONOUR: I'll make a note on the fact sheet address for the 245 order. Yes, thanks for your help and each of you are right to go. Thanks for coming.