

IN THE KIRIBATI COURT OF APPEAL]
CIVIL JURISDICTION]
HELD AT BETIO]
REPUBLIC OF KIRIBATI]

Civil Appeal No. 9 of 2011

BETWEEN **ATTORNEY GENERAL IRO KIRIBATI**
 NATIONAL STATISTICS OFFICE
 MINISTRY OF FINANCE **APPELLANT**

AND **ITINNANG UAN AND OTHERS** **RESPONDENTS**

Before: Paterson JA
 Williams JA
 Barker JA

Counsel: *Taoing Taoaba* for appellants
 Taira Timeon for Respondent

Date of Hearing: 26 August 2011
Date of Judgment: 31 August 2011

JUDGMENT OF THE COURT

1. The Attorney General in respect of Director Kiribati National Statistics Office Ministry of Finance has appealed against the decision of the High Court dated 19 November 2010 that the plaintiffs are entitled to be paid overtime for work performed under their contracts of employment.
2. The respondents to this appeal were engaged in terms of a written contract to carry out a demographic health survey on South

Tarawa in 2009. The contract provided for wages at the rate of Level 14 of the Government salary scale (equivalent to a gross wage of \$242 per fortnight) but there was no mention of overtime. The work plan showed that the respondents were expected to work a six day week.

3. Having signed the contract, the respondents refused to work on Saturdays unless overtime was paid. They claimed that the agreed rate of pay was that applicable to a 5 day week. The contract took effect on 18 September 2009 and on 28 September 2009 the Director of Statistics (who was in charge of the survey) had a meeting with the respondents. He gave them an undertaking that overtime would be paid.
4. The High Court decided that it was within the ostensible authority of the Director to give this undertaking on behalf of the present appellant who is thereby bound to recognize an obligation to pay overtime.
5. Upon appeal to the Court of Appeal, the appellant contends that the parol evidence rule should apply so that the oral communication should not be admitted to add to, vary or contradict the terms of the written content.
6. The question of payment for overtime was not dealt with in the written contract but was a separate matter dealt with by the Director in his subsequent undertaking. The parol evidence rule does not apply. The respondents were entitled to rely upon the oral agreement made on behalf of the appellant by the Director. By virtue of his position the Director must be taken to have the apparent authority to bind the appellant.

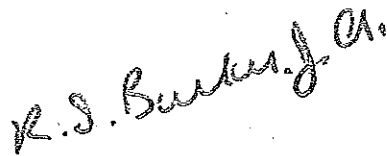
7. The appeal will be dismissed. The appellant will pay the respondents their costs of the appeal which unless agreed will be fixed by the Registrar.



Paterson JA



Williams JA



Barker JA

