

CAUSE NO. 2016-33668

NKEOMA BRENDA EZENAGU § IN THE DISTRICT COURT OF
 §
 § Plaintiff,
 §
vs. § HARRIS COUNTY, TEXAS
 §
OLUSHEGUN OLAGUNDOYE AND §
KINGHAVEN COUNSELING GROUP §
 §
 § Defendants. § 151st JUDICIAL DISTRICT

KINGHAVEN COUNSELING GROUP, INC.'S (TRADITIONAL) MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF THIS COURT:

Defendant Kinghaven Counseling Group, Inc. (hereinafter referred to as “Kinghaven” or “Movant”) files this (Traditional) Motion for Summary Judgment to dismiss claims filed by Nkeoma Brenda Ezenagu . (hereinafter referred to as “Ezenagu” or “Respondent”) and would respectfully show the Court as follows:

I. PARTIES

1. Kinghaven Counseling Group, Inc. was sued (as Plaintiff Nkeoma Brenda Ezenagu’s employer) for alleged sexual harassment by an employee (Defendant Olushegun Olagundoye) of Kinghaven. As discussed below, the identity of the employee that worked for Kinghaven is different from Plaintiff herein. This fact is material since neither the “fake or real” employee met the mandatory statutory requirement of bringing this alleged sexual harassment lawsuit, as a matter of law.

II. SUMMARY OF FACTS

(PLAINTIFF FAILED TO MEET EEOC’S PRESUIT ADMINISTRATIVE PREREQUISITE TO FILING SUIT---SUIT MUST BE DISMISSED AGAINST DEFENDANT KINGHAVEN)

2. A lady came to the business premises of Kinghaven at 9100 Southwest Freeway, Houston, Texas 77074 and requested an Employment Application on or about August 12, 2015. This Applicant completed Kinghaven's Employment Application and stated in the Employment Application (submitted to Kinghaven's Human Resource Department) that her name was "Chimdinma Ezenagu Chioma" with a Social Security Number 675-09-9139. (See attached **Exhibit 1**, affirmed by Plaintiff in her Sworn 2016 Deposition attached to this Motion). The applicant also completed a W-9, under penalty of perjury, restating that her name is "Chimdinma Chioma Ezenagu" and listed the same Social Security number as her number. (See attached **Exhibit 2**).

3. On or about the same date, this Applicant submitted to Kinghaven a United States Government issued Social Security card bearing "Chimdinma Chioma Ezenagu" with a Social Security Number 675-09-9139 along with a State of Texas issued identity card number 08400464 under the same name claiming they were her documents. These documents were intentionally submitted to Kinghaven Human Resource Department by the Applicant for Kinghaven to rely on these identifying records for verification, criminal background check and employment purposes of "Chimdinma Chioma Ezenagu" at Kinghaven.

4. Between August 12, 2015 and February 5, 2016, this hired Applicant appeared at Kinghaven and signed documents under the name of Chimdinma Ezenagu and completed payroll direct-deposit under the name Chimdinma Chioma Ezenagu at Bank of America account number 488051981693, under which Kinghaven paid Chimdinma Chioma Ezenagu as its employee.

5. On or about April 29, 2016 Plaintiff herein, Brenda Nkeoma Ezenagu, filed a "Charge of Discrimination" with the Equal Employment Opportunity Commission ("EEOC) against Defendant Kinghaven alleging "Sex", "Retaliation" and "Other Pregnancy Act" bases of discrimination pursuant to 42 U.S.C. Sec. 2000e et.seq. (See attached **Exhibit 3**)

6. While EEOC was just commencing its statutorily mandated investigation and remediation of any finding of violation(s) under the employment Statute, Plaintiff (Brenda Nkeoma Ezenagu, not Chimdinma Chioma Ezenagu) filed an employment lawsuit on May 21, 2016 alleging the same sexual harassment facts that is the subject of the commenced investigation by the EEOC. (See attached **Exhibit 4**). The Court would take judicial notice that the lawsuit Intake Sheet filed by Plaintiff's Counsel clearly and unequivocally stated that Plaintiff's suit was an "Employment" lawsuit (not a tort case e.g. assault, battery or intentional infliction of emotional distress case). (See attached **Exhibit 5**).

7. The EEOC was forced to discontinue its statutorily mandatory adjudication and investigation because Plaintiff preempted its investigation by the suit Plaintiff filed on May 21, 2016. (See attached **Exhibit 4**). The EEOC dismissed Plaintiff's employment discrimination Complaint since Plaintiff did not allow the EEOC to perform its mandate. (See attached **Exhibit 6 stating the EEOC's termination of its investigation because suit was filed by the Plaintiff**).

8. Under the law , sexual harassment employment discrimination plaintiffs (required to give the EEOC at least six (6) months to investigate Charge of Discrimination) would have had Ninety (90) days from the date of EEOC's completion of its investigation and issuance of Right to Sue Letter to initiate a lawsuit (which would have been EEOC investigation until October 29, 2016 before any permissible suit could have been filed by the Plaintiff ---assuming she was the appropriate party, but suit was filed by the Plaintiff herein on May 21, 2016 prompting the EEOC to close its file prematurely).

9. Plaintiff failed to comply with the statutorily mandated requirement to exhaust her administrative (EEOC remedies---assuming the right party is before this Court) , which requires plaintiff's to at least give the EEOC six (6) months minimum time to investigate and seek administrative remedies before Plaintiffs seek a Right to Sue Letter to proceed to court. Such administrative remedies were not exhausted in the case at bar by either Chidinma Chioma

Ezenagu or Brenda Nkeoma Ezenagu. This Court is required to dismiss Plaintiff's suit against Defendant Kinghaven (Employer) for Plaintiff's failure to exhaust mandatory administrative remedies, as clearly reflected in the records before this Court.

10. Another basis for the Court's dismissal consideration is that the employee and records reflect a person named Chimdinma Chioma Ezenagu. Such employee never filed a discrimination charge nor bring suit. Instead, an Nkeoma Brenda Ezenagu filed suit before this Court alleging that she intentionally stole someone else's identity (which presupposes that an actual person exists by the name Chimdinma Chioma Ezenagu). Nkeoma Brenda Ezenagu was not the employee and Chimdinma Chioma Ezenagu never even filed any EEOC employment Discrimination Charge Plaintiff asks the Court in her lawsuit to reward her admitted fraud, which is apparently still persisting since she may not be whom she is claiming she is before this Court.

III.

TRADITIONAL SUMMARY JUDGMENT UNDER TEXAS RULE 166a

11. The preceding timeline reflect undisputed facts that Plaintiff filed an EEOC Charge of Discrimination on April 29, 2016 and filed an employment discrimination (sexual harassment) lawsuit on May 21, 2016 (three weeks later) based on the same facts. (See attached **Exhibits 3, 4 and 5**). Congress mandated that such employment actions by employees must first be filed with the EEOC and the complainant must exhaust her administrative remedies before proceeding to litigation. Such prerequisite to litigation was not complied with by the Plaintiff at bar and the sole option for the Court is to dismiss the case against Defendant Kinghaven sued here as an employer under Title VII of the Civil Rights Act of 1964, as amended

(and also falls under the mandatory domain of the EEOC's investigation for a minimum of six (6) months before suit can be commenced by a plaintiff).

12. A party is entitled to summary judgment if there is no genuine material fact in dispute. The case at bar is a prime case where summary judgment applies since there are no genuine material facts in dispute. As articulated in City of Houston v. Clear Creek Basin Auth. 589 S.W.2d 671, 678 (Tex. 1979), Defendant Kinghaven is entitled to summary judgment as a matter of law since there is no genuine disputed material fact that disputes that Plaintiff (though not the named hired employee) Brenda Nkeoma Ezenagu did not comply with statutory mandate to exhaust her EEOC administrative remedies (including investigating her claims) before filing a \$100,000,000.00 (One Hundred Million Dollars) lawsuit, which she testified in her deposition allows her to seek a sort of Assylum in the United States on the premise that she is a victim of sexual abuse (since she has been in the United States illegally since 2014 and has admitted using this lawsuit to seek asylum likely under a "U Visa" for helping law enforcement agency's investigation e.g human trafficking or spousal battery scenario). (See attached Plaintiff's Deposition Excerpt , **Exhibits 7, Pages 224 Line 5 to Pages 226 Line 3; Page 236 Line 14 to 17; Page 270 Lines 3 to 12; and Page 304 Line 16 to Page 307 Line 11**). .

13. Plaintiff's (who claims impersonating someone else in the employment at Kinghaven) incredulous lawsuit allegation that she was raped by Kinghaven's CEO three times a week (even when on her period) from August 2015 to February 2016 and kept pebbles in a jar to keep count of how many times she has been raped is clearly sensationalizing this suit for the immigration asylum she seeks through the pleadings filed with this Court. Particularly, Plaintiff admits she does not care about remedies in the case at bar (during her refusal to give details at her deposition questioning at which it became apparent that she filed this lawsuit to seek adjustment of her illegal immigrant status under a claim of being an abused victim---

Violence Against Women's Act) but stated she wanted to tell her "scripted" story through the media (including newspapers and the internet). See attached Deposition Excerpt , **Exhibits 7, Pages 224 Line 5 to 226 Line 3 (Used someone's Identity to apply at Kinghaven); Pages 239 Line 17 to 240 Line 17, Page 270 Line 2 to 12 , Page 236 Line 14, and Pages 304 Line 16 to 307 Line 11 (Immigration filing based on this lawsuit)** These Plaintiff's sworn deposition statements in the litigation at bar and Plaintiff's lawyer's obstruction at deposition of the Plaintiff, while important to understand Plaintiff's motivation, gives context to why Plaintiff side-tracked the non-public administrative EEOC investigative and remedial (mandatory employment discrimination protocol) and rushed to court (and immediately called press conference(s) and disseminated sensational press statements (to be used in her asylum request with the U.S. Homeland Security-Immigration process). The Court will take Judicial Notice that Plaintiff vehemently opposed (and the Court ruled in favor of the Plaintiff) on Defendant's Motion to issue a "Gag Order" precluding the Plaintiff from further talking to the media (since Plaintiff has made a point of sensationalizing unverified and inaccurate salacious stories to the press).

**IV. AUTHORITIES IN SUPPORT OF DISMISSAL FOR NOT EXHAUSTING ADMINISTRATIVE
REMEDIES**

14. Many court decisions and legal articles have been written on whether the requirement to exhaust the EEOC administrative investigation and remedial protocol is a "Jurisdictional" or a "Mandatory" requirement. One authority suggests that it cannot be Jurisdictional because if the courts have no jurisdiction, then neither can it dismiss such action filed when an aggrieved employee fails to exhaust the EEOC mandatory presuit investigative process or suit prerequisite. It appears that the proper term is Mandatory requirement. Employment discrimination complaints in Texas are investigated under dual agreement between Texas Commission on Human Rights (TCHR) and now Texas Workforce Commission (TWC) and the EEOC. Once complaint is filed with the EEOC , the Complaint is deemed compliant with Texas'

TCHR so long as the Charge is filed within 180 days of the discriminatory act--which is 300 days under the Federal EEOC provision). Under both the Texas and Federal anti-discrimination laws, Plaintiff alleging sexual harassment claim must exhaust her administrative remedies by allowing the Texas or Federal Agency to investigate the claim for a minimum of six (6) months or the Court must dismiss the suit, as a matter of law. Tex. Lab. Code Secs. 21:201-202, and 21:205-207 (Texas law modelled after Title VII's 42 U.S.C Secs. 2000e-5 et seq.; Waffle House, Inc. v. Williams, 313 S.W.3d 796, 804-805 (Tex. 2010); Hoffmann-La Roche Inc., 144 S.W.3d 438, 446 (Tex. 2004) (quoting Schroeder v. Tex. Iron Works, Inc., 813 S.W.2d 483, 488 (Tex. 1991)).

15. The Discrimination Charge filed by the Plaintiff at bar (Nkeoma Brenda Ezenagu who is different from Kinghaven's employee of record named Chimdinma Chioma Ezenagu) was filed on April 29, 2016 (See attached , **Exhibits 1, 2, 3 and 4**). Before the EEOC could duly investigate the Complaint, Plaintiff filed a \$100,000,000.00 lawsuit asserting the same employment discrimination allegations contained in the Employment Discrimination Charge filed three (3) weeks earlier with the EEOC. Plaintiff also did not controvert in the District Clerk Intake Sheet that the lawsuit was for an employment sexual harassment case (when Plaintiff had the option to designate that the suit was for a tort). Courts have actually disallowed attempts by lawyers to couch employment discrimination actions as a tort in an attempt to fast-track their case and get in line on the court docket while the EEOC is conducting its investigation of discrimination. Waffle House, 313 S.W.3d at 807 (held that Texas Discrimination statute precludes common law claims arising from the same facts and acts-- disallowed negligent supervision and retention claim by employee); City of Waco v. Lopez, 259 S.W.3d 147, 155 (Tex. 2008) (held that Texas anti-discrimination statute is the sole remedy for facts regarding Retaliatory discharge and the court dismissed employee's whistleblower claim); Hoffman-La Roche Inc., 144 S.W.3d at 450 (court held that Texas discrimination law precludes common-law tort claim of intentional infliction of emotional distress). Similarly, In the case at

bar, Plaintiff clearly declared in its intake form filed at the commencement of this case on May 21, 2016 that this was an employment discrimination case, with the same facts as contained in the EEOC Charge. Precedent in Texas is that Plaintiff is not allowed to raise parallel common law claim against an employer under the same facts (the facts in the EEOC Charge exactly tracks those in the lawsuit at bar by Brenda Nkeoma Ezenagu (See attached Exhibits 3 and 4).

16. The proper disposition of this Motion is for the Court to grant Kinghaven's Motion for Summary Judgment since time has lapsed for any possible cure of the multiple defects by an amendment to the Charge of Discrimination by either Chimdioma Chioma Ezenagu or the Plaintiff since more than the statutory 300 EEOC days (or 180 days under Texas TWC/TCHR) has lapsed for this Plaintiff (who was not the named employee) to amend her Charge of Discrimination. (See attached Exhibit 3). Plaintiff swore under oath in Exhibit 3 that her employment ceased February 5, 2015 (which is practically a year and beyond the mandatory 300 days to seek EEOC's investigative compliance prerequisite to a suit). Courts have no discretion in enforcing this mandatory statutory requirement under 42 U.S.C. Sec. 2000e et seq (Title VII). Thus, Plaintiff's case against Defendant Kinghaven must be dismissed with prejudice since Plaintiff (consciously) chose to disregard Title VII presuit exhaustion of her administrative remedies before filing suit since her real end-game was to use this case as basis for regularizing her illegal (out of status) immigrant status.

17. Complainants who file Charge of discrimination with the EEOC are required to allow the Commission time to investigate and redress any wrong found. However, such complainant may seek Right to Sue and proceed to court if the investigation is not completed by the EEOC after six (6) months of the filing. In the case at bar, Plaintiff Ezenagu preempted the EEOC's investigation by rushing to this Court, thereby causing the EEOC to terminate any parallel action when Plaintiff has chosen to side-track the Commission by filing suit right after filing the EEOC Charge. (See attached Exhibit 6) Clearly, Plaintiff failed to exhaust the requisite administrative remedies requirement and might as well have abstained from filing charge with

the EEOC against Kinghaven. (See Exhibit 8 printout of EEOC's Website mandating the six months presuit wait by Plaintiffs)

18. Also troubling is the requirement that every complainant must file with the EEOC under Title VII, no such filing was made by Chimdinma Chioma Ezenagu, the employee of record. Neither did the administrative Charge filed with the EEOC mention this employee----- Chimdinma Chioma Ezenagu Again, this lawsuit fails since the employee of record upon whose name payment and services were attributed neither participated nor appeared at the presuit mandatory EEOC protocol. Dismissal is appropriate under the circumstance, otherwise continuous fraud will be perpetrated on this Court and on the Defendant Kinghaven

V. AWARD OF KINGHAVEN'S ATTORNEY'S FEES

19. Plaintiff (Ezenagu) clearly stated in her Original Petition (See attached Exhibit 4) that she impersonated someone else and used false social security card and false Texas Identity Card to secure employment at Kinghaven in August 2015. The suit against Defendant Kinghaven is based on Title VII (and courts have held that such suits can only be based on Title VII). No provision under Title VII allows Plaintiff or her lawyer to recover the "sensational" \$100,000,000.00 sued for or their subsequent footnote that they seek \$1,000,000.00 from Kinghaven for this fictitious named Plaintiff or impostor. (Title VII claims are capped at much lower recovery level than claimed by the Plaintiff). Rather, Title VII makes provision for recovery of attorney's fees by a prevailing party, for which Counsel for Kinghaven seeks his reasonable and necessary attorney's fees to defend this suit.

20. Attorney for Kinghaven requests that this Court award him his reasonable attorney's fees for defending this contrived Title VII case. An Affidavit of Attorney's fees in the amount of \$21,000.00 for counsel's reasonable and necessary attorney's fees for sixty (60) hours of attorney's time at a reasonable and customary hourly rate of \$350/Hour is attached as Exhibit 9.

VI. PRAYER

WHEREFORE, ALL PREMISES CONSIDERED Kinghaven prays that its Summary Judgment be Granted and Plaintiff and its Counsel be ordered to jointly and severally pay Kinghaven's attorney's fees and any further relief that the Court deems reasonable and appropriate at law and/or in equity.

Respectfully submitted,

LAW OFFICE OF PATRICK CHUKELU

/s/ Patrick Chukelu

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ATTORNEY FOR DEFENDANT,

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CERTIFICATE OF SERVICE

I certify that on January 27, 2017, I e-served a true and correct copy of Kinghaven's Motion for Summary Judgment, Notice Of Submission, and Proposed Order on all counsel of record in accordance with the Texas Rules of Civil Procedure, via electronic filing to: Attorney Sean Greenwood and Attorney A. Sampson Gbenjo

/s/ Patrick Chukelu