



CORPORATE GOVERNANCE IN AFRICA CASE STUDY SERIES: NO 9

Conflict arising from the separation of the roles of the Chief Executive Officer and the Chairperson

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Dimpho Tau, who had recently been appointed the new CEO for Bopheo Construction (Pty) Ltd, was still settling in her office when John Travis, the Chairperson, entered.

'Good morning, Dimpho. Let me be the first to welcome you to Bopheo's headquarters. Congratulations once more on such a huge achievement!'

'Thank you,' Dimpho replied, shaking his hand.

'You are a deserving candidate and I have no doubt that you will add tremendous value to Bopheo. There are a couple of urgent matters -- the company's strategic vision and major contracts. Please set up a string of strategic meetings with both the management committee and the Board. Have a look at the three operational contracts left on your desk. I have already signed, you just need to familiarise yourself with them. They will make for interesting reading. For any queries, liaise directly with my office, okay? Thanks.'

By the time John Travis left the office, Dimpho was not only confused, but devastated as well. 'What just happened?' she asked herself.

Her feelings of triumph had quickly been replaced by distress. Was it not one of her primary duties to provide leadership and strategic direction for the company? Her training through the NACD Blue Ribbon Commission on Corporate Succession had made her believe that these two roles were separate. John Travis' role should be to preside over Board meetings and ensure the smooth functioning of the Board in the interest of good corporate governance, while the CEO should be left to run the business and implement policies and strategies adopted by the Board. She was in a dilemma. Not only was John Travis the former CEO of Bopheo Construction, but he was currently its Chairperson and one of its major shareholders. In addition, as her mentor, he had been instrumental in her getting this job.

The road to separation

The road to the separation of Chairperson from CEO has not been an easy one for Bopheo Construction (Pty) Ltd (Bopheo). Indeed, it has been a long and a reluctant one. It grudgingly took place after extreme pressures from the stakeholders who felt that with the company's plan to list on the JSE and to expand to Europe, it was imperative that they complied with local good corporate governance requirements and with international standards. The Board had argued that since the envisaged expansion was to Europe, the separation was absolutely necessary, as unlike in the USA, the separation of these roles was necessary in Europe. Ford Brent, who together with Theunis Travis were driving this separation of roles, presented the Board with documentation to support their case. They presented statistics on the percentage of CEO/Chairperson role separation in various stock exchanges throughout the world, as shown below:

Exhibit 1: Chairperson/CEO Role Separation (2003) Listed Companies

Country	Separation %
UK	95%
USA	18%
Australia	90%
Canada	65%
Belgium	25%
France	20%
Germany	100%*
Netherlands	100%*
Japan	100%*
Russia	100%*
South Africa	100%*

Source: Compiled from Dahya and Travlos (2000); Coombes and Wong (2004); DGA (2004).

*Separation of the Chairperson/CEO role is a requirement for listing on the stock exchange.

In addition they had collected information from studies that showed that by separating the roles, the company could gain:

- improved governance
- better change management in line with the changing environment
- performance improvement
- stronger impact on board effectiveness
- fewer adoptions of poison pills
- better ways of dealing with bankruptcy, corruption and fraud
- avoidance of potential CEO entrenchment and poor bottom-line performance.

John Travis Senior had argued against the separation. He felt that whether or not a company separated the CEO/Chairperson role had no bearing on corporate financial performance. He mentioned that internationally a number of big corporations such as IBM, Coca Cola Co., Disney, Dell, Oracle and Microsoft did not have a sudden leap in financial performance when they separated the roles. In fact, he felt that locally companies that had an active Chairperson and not the typical BEE Chairperson had weakened their capacity to develop and implement their strategies. He believed that there was no compelling case to be made as to why Bopheo had to separate these roles as the company was not troubled, facing any scandals or a major executive succession challenge.

He believed that with half of their Board members being independent and non-executive, Bopheo could achieve the Board independence that the separation of these roles was meant to achieve. In addition, if independence was so sought after, the Board could meet without the CEO or meetings excluding all the executive Board members could be scheduled. He felt it unfair that the JSE required the separation

when it added no value but cost, ambiguity of roles and responsibilities, no focal point for leadership, increased chaos and a weakened corporate strategy.

After long deliberation and in light of the move to list with the JSE and the international expansion, and with the shareholder resolution calling for the separation (*See Exhibit 2*), the Board voted for the separation.

The Board further voted John Travis Senior as Chairperson, as they felt that as the founder he understood the company, the industry and dynamics far better than any other Chairperson would. They believed him to be credible and that he would be accepted by all the stakeholders as their leader. Additionally, they believed that with his impending retirement, this would be a perfect opportunity to work on the succession strategy.

For the new CEO role, they had to choose between internal or external recruitment. There were strong arguments supporting an internal candidate. Several candidates were highlighted for the position, including John Travis Junior. Others felt this opening was an opportunity for Bopheo to improve their BEE ratings and achieve the set targets.

NACD Blue Ribbon Commission on Corporate Succession was brought on Board to assist with the recruiting and training of the new CEO. This route was favoured as it was seen as making the transition easier and ensuring that the new CEO got up to speed with the new job.

Exhibit 2: Shareholder Resolution for 2006

Shareholder Resolution on Separation of CEO and Board Chairperson for 2006 Bopheo Construction (Pty) Ltd Shareholder Meeting

Separate CEO & Chairperson, Bopheo Construction (Pty) Ltd

Resolved: The shareholders of Bopheo Construction (Pty) Ltd request that the Board of Directors establish a policy of separating the roles of Chairperson and Chief Executive Officer, so that an independent director other than the CEO serves as Chairperson of the Board of Directors.

Supporting Statement

The principle of the separation of the roles of Chairperson and Chief Executive Officer is a basic element of sound corporate governance practice. The primary purpose of the Board of Directors is to protect shareholders' interests by providing independent oversight of management and the CEO. The Board gives strategic direction and guidance to our Company.

Given these different roles and responsibilities, we believe:

- An independent Board Chairperson -- separated from the CEO -- is the preferable form of corporate governance.
- It is the role of the CEO & management to run the business of the company.
- An independent Chairperson and vigorous Board will bring greater focus to ethical imperatives, and be better able to forge solutions for shareholders and consumers.
- Separating the roles of Chairperson and CEO at Bopheo Construction (Pty) Ltd would result in greater independence and accountability which would allow the company to have greater focus and thereby better address issues of environmental, social and health impacts of the company's products and services.
- The Board will likely achieve its goals more effectively by separating the roles of Chairperson and CEO. An independent Chairperson will enhance investor confidence in our Company and strengthen the integrity of the Board of Directors.
- A number of respected institutions recommend such separation. CalPER's Corporate Core Principles and Guidelines state: 'The independence of a majority of the Board is not enough' and that: 'The leadership of the Board must embrace independence, and it must ultimately change the way in which directors interact with management.'

- An independent Board structure will also help the Board address policy issues and other complex issues facing our company, among them:
 - allegations of nepotism, sexism, racism and favouritism
 - SHEQ challenges that could lead to failure to obtain ISO and NOSA certification
 - negative media coverage.

In order to ensure that our Board can provide the proper strategic direction for our Company with independence and accountability, we urge a vote FOR this resolution.

Company background

Bopheo Construction (Pty) Ltd is a wholly owned subsidiary of BCS Limited and started out as a family business owned by John Travis Senior in 1991. Beginning with only a few key clients, it has gone on to become one of the major players, especially in the KwaZulu-Natal market. The company's involvement in major projects in the region has further cemented its role as a leader. By March 2005 it had achieved consolidated operating revenue in excess of R34,2 billion with net profits of over R1,2 billion. Total assets amounted to R55,2 billion, shareholders equity R16,8 billion and its cash flow from activities was R8,2 billion in the year ended March 31, 2005. By 2006 they had publicly listed on the JSE Securities Exchange and were planning on listing on the London Stock Exchange.

Bopheo provided a comprehensive range of construction and related services that included:

- **Roads Construction**
The construction of major and minor roads.
- **Pipeline Construction**
The company had completed numerous pipeline projects, including water, sewer and storm water contracts. These projects included bulk pipelines, dams, weirs, reservoirs, irrigation schemes, pump stations, gabion river protection and flash flood retention dams.
- **Township Infrastructure**
The company had comprehensive experience and resources to undertake township infrastructure construction, Greenfields and *in situ* upgrades.
- **Building and Housing**
The company concentrated on commercial and retail developments, educational facilities, Goldflex precast building systems, healthcare facilities, hotel and leisure facilities, industrial premises, and mass and residential housing.
- **Civil Engineering**
The company was involved in fluid distribution and storage, metallurgical and flotation plants, milling plants, material handling, silos and storage, mining, power stations and industrial structures, port and marine facilities and the supply of batched concrete.
- **Roads and Earthworks**
The company focused on airports, bridges and interchanges, canals and pipelines, contract mining and infrastructure, dams, rail projects, roads and highways, and township infrastructure.
- **Engineering Projects**
The company specialised in multi-disciplinary mining, industrial, power, oil and gas projects and industrial plant maintenance and turnarounds.

Some of the major achievements of Bopheo Construction (Pty) Ltd included:

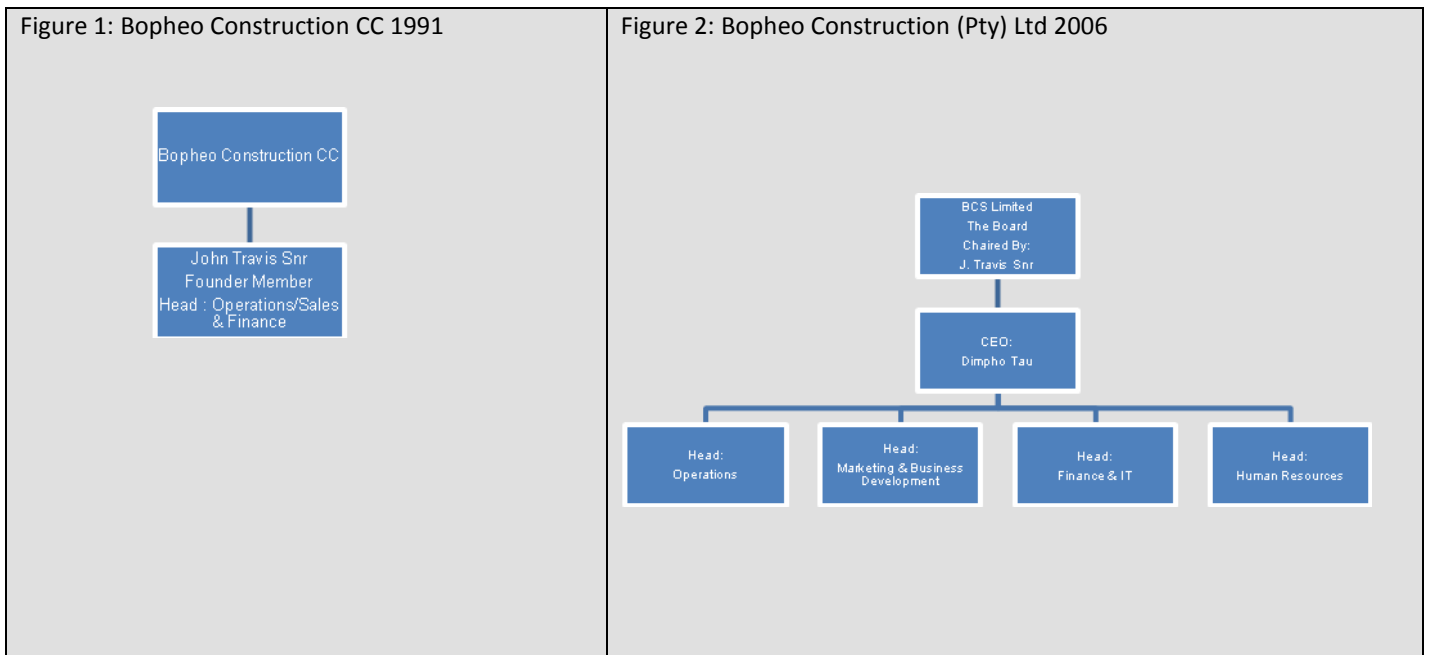
- Consistent ISO 9001 and NOSA compliance
- Empowerdex BBBEE ratings of Level AA
- Construction Industry Development Board (CIDB) registrations in the following categories: 9CE, 9GB, 9SB and 9SJ.

Ownership and leadership

In 1991 John Travis Senior was the sole owner and managed everything from operations to financials. By 2000 the company had grown sufficiently for John Travis Senior to give shares and control to his two sons -- John Junior and Theunis. In 2002 more shareholders were brought in and by 2003 the company

had listed on the stock exchange. Traditionally (and currently to some extent), the business had been controlled by Travis Senior; all the major decisions had to go through him and the company was still very much his. Delegating did not come easy to him; he even found it difficult to delegate to his own sons. An engineer by qualifications and a self-made man, Travis Senior found it hard to entrust others with total control even when they were experts in their respective fields. With acquisitions, expansions and the listing of Bopheo, the business had to change direction and comply with various regulations and requirements.

Exhibit 3: Bopheo Construction (Pty) Ltd's organogram through the years:



Executive Committee (Exco)

In addition to John Travis Senior, the executive committee (Exco) was made up of the following:

- **John Travis Junior -- Head: Operations**

Regarded by most as second in command, John Travis Junior was an expert in the field with in-depth knowledge of Bopheo and the industry, gained from working in the industry since the age of 18 and from being taught by his father. He had worked his way up from the bottom of the ranks. He was well respected and liked. He had the educational qualification to back up his experience. Initially, he resisted the separation but changed his mind when he was convinced that he stood a chance of being made the new CEO. He was very disappointed when the position went to someone else.

- **Theunis Travis -- Head: Marketing & Business Development**

The second son of John Travis Senior, Theunis was known as the rebel, the less conservative, out-of-the-box leader who kept updated about the latest international and local business developments. He felt it was not good for Bopheo's future for power to be concentrated in one individual; he was most excited that a new CEO and a number of non-executives have been put on Board. A PhD graduate, he was a continuous learner with a keen interest in international trends.

- **Ford Brent -- Head: Finance & IT**

A qualified CA, Ford had recently been appointed and was a keen supporter of Mervyn King. Both the King Report I and Report II were known to be his bible. Although he had not uncovered any irregularities in Bopheo, he was uncomfortable with the risks that the current setup posed. He got on very well with Theunis Travis, although the same could not be said about his relationship with both John Travis Senior and Junior.

- **Zethu Makhathini -- Head: HR**

Fairly young and inexperienced, Zethu had been appointed for her drive and accomplishments to implement changes at Bopheo. She was highly regarded for her passion and her past successes in driving changes in the political landscape and in the corporate world. Zethu was known as the quiet one in the team but could be forceful if she believed in something.

- **Rod Smith -- Non-executive member**

An associate of John Travis, Rod Smith was the CEO of Smith Construction, a company considered a competitor of Bopheo. This led to many asking if interlocking directorship was part of good corporate governance. He was very knowledgeable and brought a lot to the table. He was known to be trustworthy, dependable and loyal.

- **Jessica Strauss -- Non-executive member**

A CA by profession and running her own business, Jessica had been involved with Bopheo in various projects and understood the business thoroughly. Her relationship with the company was well entrenched and she was well known and respected throughout the organisation. Outspoken and principled, she was a champion of corporate governance and wanted to be fully compliant.

- **Zakes Mthethwa -- Non-executive member**

He was one of the major BEE partners, knowledgeable and experienced. He added great value to the company through his extensive networks. Extremely busy, he was known to miss meetings from time to time. Discussions were underway to find his replacement.

- **Futhi Bhengu -- Non-executive member**

An alternate member, Futhi came with a huge reputation as a dealmaker in the industry. His company has been involved in a number of joint ventures that were responsible for major development projects. Futhi was a self-made man, very politically inclined.

- **Joseph Crouser -- Non-executive member**

Joseph, the last member, came with legal and business qualifications. In addition, he had extensive experience in the industry and many connections. He had Board membership on a number of unrelated companies and had been serving on the Board of Bopheo for a couple of years.

Lastly, Dimpho Tau -- the newly appointed CEO.

Regulatory background

According to Malherbe and Segal (2001), by the late 1980s many of South Africa's corporations were characterised by a lack of focus and were run by entrenched and complacent managers. These firms were sustained and tolerated by a very different environment from that in advanced economies and capital markets. The mainstay of the South African environment was isolation. Tariffs and political isolation shielded firms from foreign product competition, while financial sanctions kept international institutions out of the domestic capital market, and South African firms out of international capital markets. Corporate practices fell behind international norms, as did laws and regulations.

Most companies were directed by the Companies Act No. 61 of 1973 which had major limitations such as making provision only for the roles, responsibilities, accountability, liability, qualification and disqualifications of directors while not addressing the accountability and responsibility of the company to its stakeholders. It also failed to provide for comprehensive reporting that not only included financial reporting, but reporting on environmental and social matters. The Companies Act also failed to regulate the supply of non-auditing services, such as consulting, by the auditing firm.

These limitations coupled with the recognition of the worldwide importance of corporate governance led to the formation of the King Committee. Set up in 1992, this committee studied corporate governance in South Africa and published recommendations in the King Report. The publication coincided with South Africa's social and political transformation to a democracy that became part of the world economy. The report was reviewed and replaced by the King Report on Corporate Governance for South Africa 2002. The majority of the recommendations found in the report have been implemented by both listed and non-listed companies alike. In addition, the JSE incorporated these recommendations as part of the requirements to list in the stock exchange. The King Report III is currently being worked on.

The industry

By 2003 the construction industry was going through a major boom -- total construction spend in 2002 exceeded R57,5 billion of which 29,5 percent came from public corporations and 56.9 percent from the private sector. The amount spent in South Africa on construction and construction-related activities in 2002 amounted to 5.1 percent of GDP, up from 4.9 percent in 2001. Many felt in years to come with large events coming up such as 2010 soccer, this number was going to grow even further.

There were many major challenges faced by the industry such as skills and supply shortages, HIV/Aids and regulatory requirements (including corporate governance). Many felt these were not given the necessary urgency required, as competition was tough and companies were in a hurry to make as much money as possible.

The industry had a poor legacy of corporate governance. Employees were poorly treated and not respected as was reflected in employment and safety and health statistics. Shoddy service was

becoming the norm and improper procurement practices were the order of the day. Most of King's recommendations were not followed unless it was a requirement for listing.

Current situation -- Issues of power, authority and tokenism

With the change of direction and the intention to comply with various regulations and requirements, Bopheo went through a process of acquiring new talent, restructuring the business and ensuring increased financial returns for the business. In came Dimpho Tau, a CA by profession who had obtained the qualification through a financial programme sponsored by Bopheo, when she started work there soon after graduating with a BCom degree. While busy with her articles, she made time to do two masters degrees -- an MBA and MCom.

From the start it was clear that she was going to go places -- very articulate, a hard worker, honest, strategic, curious, a lifelong learner, ambitious, assertive and with a strong personality, she embodied all the right values that were important to Bopheo. John Travis Senior immediately took to her and took her under his wing. He provided her with coaching and mentoring throughout her career. She progressed from her first role as a Management Trainee to Operations Manager, then to GM Designate and lastly to her current role as CEO.

She had the respect of her colleagues, her subordinates and the Board because although very accomplished, she had remained true to her humble beginnings. Her mother had been a cleaner at Bopheo and her father a messenger, so she was a Bopheo loyalist through and through. The way she saw it she owed a lot to the company as it had offered her and her five other siblings' financial assistance to complete their studies.

Her first day as CEO had left her so conflicted that she hired JBP Consultancy, outside consultants who were experts on corporate governance and executive development.

Having been briefed about the current situation and having researched the problem further, JBP Consultancy came back to Dimpho Tau with the following findings:

- The separation of these roles was a relatively new concept in South Africa with theorists and executives alike holding conflicting views as to whether there was any value in the separation. Many felt the separation would be irrelevant in the future and that other means to achieve Board independence would be utilised.
- International trends differed quite significantly. The separation of roles had not been implemented quite as reverently in the USA as in Europe. Asia had followed the European lead and was insistent on the separation.
- In South Africa, the resistance and reluctance to separate these roles had largely been based on:
 - the perceived loss of power and control by the CEO
 - questions about the lack of evidence supporting improved corporate performance due to the separation of roles
 - indications that even with the separation of these roles, scandals and bankruptcy could still occur as was seen with international corporate scandals that unfolded in the beginning of the twentieth century.

In short, strong evidence supporting the separation was lacking and companies did not feel compelled to separate these roles.

- Contributing factors to failures of the successful separation of these roles in SA were twofold:
 - poor Boardroom relationships, particularly between the CEO and the Chairperson and in some instances resulting in the Board being divided into two -- with one group supporting the CEO and the other group the Chairperson

- a non-independent Chairperson with a strong attachment to the CEO being appointed to the Board and then failing to act independently as per the purpose of his/her appointment.
- The role of Chairperson in the South African context was largely narrow, occupied by the BEE shareholders who were more eager for enrichment than for true empowerment and independence.
- There were concerns and rumours in the industry that this separation of roles by Bopheo was just a stunt for the sake of publicity and compliance with the JSE. It was felt that since the Chairperson was the former CEO and had worked closely with and hand-picked his successors, there was a high chance that this bond would impede objectivity and discourage impartial oversight of a CEO out of friendship or embarrassment.
- 100% of companies they had interviewed had opted to have a stronger CEO as opposed to a stronger Chairperson.
- Shareholders preferred both the CEO and the Chairperson to be strong personalities who could achieve effectiveness in their respective roles but if they had to choose, they would rather have a strong CEO who would be able make decisions and achieve the triple bottom line.

They concluded that Dimpho Tau had a rather unique situation. They offered three resolutions:

- Take advantage of the situation by using the Chairperson as a sounding board, consultant and coach, ensuring a better relationship while slowly gaining more control.
- Engage and persuade the Board to reconsider:
 - their choice of Chairperson
 - the length of the Chairperson's contract
 - the role of the Chairperson.
- Resign gracefully.

Dimpho Tau looked at the rest of their proposal and wondered if the separation had been necessary in the first place, ie. if it had not been a JSE requirement, if the separation was appropriate for South Africa's environment and if it was possible to have a CEO and a Chairperson who both had strong personalities and who both took ownership of the company and their roles equally seriously without any second guessing of decisions, egos being bruised, stifling, conflict and loss of mutual respect. She questioned what her next move should be -- jump ship or wait to be pushed, because if there was one thing she was not, it was anyone's token CEO. Or was there another option, as JBP Consultancy had suggested?

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